



# Human Rights of the **elderly** and national protection systems in the Americas





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# Executive Summary



## EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") presents this thematic report on the status of national systems for the protection of the rights of older persons, which addresses the main concerns regarding older persons in the region, identifying emerging issues and pending challenges, as well as highlighting sound State practices regarding national protection systems.
2. The Inter-American Convention on Protecting the Rights of Older Persons (hereinafter "the Convention on Older Persons" or "the CPM") is the first and only legally binding international instrument that declares the rights of older persons in a broad and comprehensive manner, in addition to presenting an innovative and explanatory catalog of rights that also includes mechanisms for monitoring their implementation, technical advice, and the possibility of invoking those rights (justiciability) in the inter-American human rights system (IAHRS). The rights set forth in the CPM refer to the needs of the elderly, based on their age, which extends the application of rights not previously applied to the elderly and innovates by adding other rights that have been developed by IAHRS bodies, such as the right to a dignified life or to live a life free from violence.
3. The Convention on Protecting the Rights on Older Persons bans discrimination on the grounds of old age and upholds the right to life and life with dignity; the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment; the right to personal freedom; freedom of expression and access to information; nationality and freedom of movement; to privacy and intimacy; to social security; to work; to education; to culture; to recreation, leisure and sports; to property; to housing; to a healthy environment; to political rights; to assembly and association; to legal personality; and to access to justice.
4. The report first describes the background to the IACHR's approach to the rights of older persons; its regulatory content with emphasis on the innovations that this treaty brings to international human rights law for protecting the human rights of older persons; and the progress made in the formulation of inter-American and international standards on the rights of older persons.
5. The IACHR then refers to the State's duty to have national systems for protecting the elderly within the framework of the IAHRS. To this end, the IACHR outlines the obligation to design protection systems that establish public policies that, progressively but comprehensively, address the situation of vulnerable populations. The IACHR also describes the core, minimum contents of systems for protecting the elderly. It then provides an overview of the evolution of the institutional framework for the elderly created at the state level, focusing on the most recent trends in the structure, objectives, and functions of those institutions in

light of the new paradigm of active aging and comprehensive protection of rights, and highlighting some examples of institutional bodies in which the elderly participate.

6. The Commission then presents an overview of the existing national systems for the protection of the rights of older persons in the region, divided into sections based on the rights contemplated in the CPM. The IACHR addresses progress made and the challenges countries face with respect to the rights to equality and non-discrimination; health and informed consent; independence, autonomy, and participation; freedom of expression; social security and pensions; food, water, sanitation, and housing; political participation and community integration; freedom from all forms of violence; and access to justice. To that end, the IACHR describes a set of regulations, policies, and programs embraced by States to ensure effective exercise of the rights of the elderly. They involve a broad spectrum of actions at different levels (strategic, programmatic, activities, specific tasks), as well as a variety of issues or topics. It also analyzes situations of vulnerability and intersectionality, and the institutionalization and care of the elderly.
7. The IACHR emphasizes that an essential aspect for undertaking this set of actions and ensuring effective exercise of the rights of older persons is to have systems and tools for gathering information, particularly for the most advanced age groups, on all issues that affect them, as well as a set of indicators that provide systematic, continuous, and reliable information for conducting diagnostic assessments, preparing plans and programs, and monitoring and evaluating their implementation. The lack of representative data and information on older persons is, in itself, an alarming sign of exclusion and makes it virtually impossible to adopt beneficial and effective policies and regulations.
8. The Inter-American Commission notes with concern that the way we think, feel, and act towards others or ourselves based on age (ageism) continues to be deeply (culturally and legally) rooted in all the States of the Americas. In this regard, the IACHR states that ageism is a form of discrimination that exposes older persons to various forms of violence. The Commission considers that the eradication of this phenomenon is an obligation under international law that States urgently need to address. For that, the aging process must be visualized as a series of natural developments in the course of people's lives (*desde una perspectiva de curso de vida*).
9. There are some positive trends that States are already implementing to promote the exercise of the rights of the elderly. According to the information reported, all States in the Americas have some type of regulatory instrument aimed at prioritizing the human rights of the elderly. Accordingly, the challenge identified is how to mainstream the objectives of re-defining and restoring dignity to the role of the elderly in society, eliminating stigma, and generating conditions for the exercise of their human rights.

10. The Commission finds that there is a wide range of programs and projects for this purpose. Preferential access to health care or implementation of different types of interventions to include the elderly in an intergenerational manner and promote active aging are widespread in the region. There are also some initiatives, using new information technologies, to bridge the digital divide experienced by the elderly, which prevents them from accessing information or exercising their freedom of expression.
11. The Commission reports the existence of social security programs in all the States of the Americas that provided information. These programs all include non-contributory pensions, which reveals the high level of commitment to the intergenerational solidarity proposed by international standards. States need to analyze the course of these policies and adjust the financial transfers they make to the elderly in economic distress to ensure pensions that effectively allow them to live a dignified life.
12. The Commission highlights the existence of programs that facilitate a life free from violence and enhance people's access to justice. In this regard, there are widely available one-stop shops, telephone lines, or comprehensive care centers that allow the elderly to file complaints, access justice in a simpler way, and receive proper care. Some experiences in the region show the adoption of programs to address not only issues of violence, but also pension issues or forced evictions: problems typically faced by the elderly.
13. Without prejudice to the above, this report illustrates the pressing need for the states of the region to adopt legislation, policies, and practices and create specialized institutions for the adequate protection of the elderly, in accordance with international standards. The conclusions and recommendations of this report seek to contribute to the development of national action plans and institutions that respond to the special protection needs of older persons in the OAS member states in light of the Inter-American Convention on Protecting the Human Rights of Older Persons.
14. Among the still pending tasks is the need for states to delve deeper into such issues as the capacity of older persons or the interdiction processes that legally override their consent, for example, regarding their right to property or the decision on where an elderly person wishes to live. Another issue is the institutionalization of the elderly and the need to change the paradigm of inpatient care towards community care models that allow the integration of older persons with their communities, avoiding isolation, and promoting their autonomy, even in the most complex situations that may arise during aging and require full-time health care.
15. Finally, the IACHR reiterates its call to states to promptly accede to the CPM. It also remains at the disposition of states to provide the technical support required to implement the recommendations put forward in this report.



# Introduction

## INTRODUCTION

16. The Inter-American Commission presents this thematic report on the status of national systems for protecting the rights of older persons in compliance with the mandate entrusted to its Rapporteurship for the Protection of Older Persons to conduct studies to evaluate the human rights situation of older persons in the member states of the Organization of American States (hereinafter "the OAS"), and to propose effective measures for them to adapt their internal regulations and practices to ensure respect for and guarantee the human rights of this segment of the population in the region.
17. By the year 2050 it is estimated that there will be 1.5 billion people aged 65 and over, representing one sixth of the world's population<sup>1</sup> and between 20% and 25% of the population of Latin America and the Caribbean<sup>2</sup>, with the United States<sup>3</sup> and Canada<sup>4</sup> following a similar trend. Thus, the attention that human rights bodies pay to the subject reflects the size of the population involved and the challenges it faces. In the same vein, the IACHR's concern regarding the human rights situation of the elderly is also based on the fundamental premise that identifies them as a group of people historically subjected to discrimination and therefore victims of patterns of human rights violations. A correlate of this is the need to build inter-American standards for the effective protection of their rights and to develop new working mechanisms to highlight their problems.

### A. Objective and scope of the report

18. Based on the foregoing, this report, the first of its kind in the Americas, is the result of a process that has made it possible to put together the main regulatory and jurisprudential standards on the subject and to identify new developments in other human rights bodies specializing in addressing the rights of older persons. The IACHR has also consulted directly with the States of the Americas regarding their protection systems and with individuals and specialized civil society organizations. In October 2017, the Commission held a first Regional Public Consultation on the rights of older persons in Montevideo - Uruguay, with

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<sup>1</sup> Human Rights Council, "Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons: Report of the United Nations High Commissioner for Human Rights", 49th session 28 February - 1 April 2022, Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General; Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/49/70, 28 January 2022, para. 4. [Hereinafter: HRC, Normative Standards and Obligations under International Law in Relation to the Promotion and Protection of the Human Rights of Older Persons. Report of the High Commissioner for Human Rights," A/ HRC/49/70, 28 January 2022.]

<sup>2</sup> IDB, [Overview of aging and dependency in Latin America and the Caribbean](#), 2018, p. 5; CAF, [Pension and Healthcare Systems in Latin America: Challenges posed by Aging, Technological Change, and Informality](#), 2020, p. 21.

<sup>3</sup> America's Health Rankings, [2021 Senior Report](#), 2021.

<sup>4</sup> Statistics Canada, [Population Projections for Canada \(2021 to 2068\), Provinces and Territories \(2021 to 2043\)](#), August, 2022.

the aim of identifying areas to work on and carrying out a diagnostic assessment of priority issues in the region. That consultation identified a series of challenges in relation to the exercise of a number of human rights such as access to housing, work, social protection, health, and palliative care, as well as protection from all forms of violence and discrimination, among others. It afforded a first experience of reflection and debate with civil society, academia, and users of the inter-American human rights system (hereinafter "the inter-American system" or "the IAHRs"), which contributed to the process of drafting the IACHR work plan on the rights of older persons and highlighted the need for this report.

19. Based on the information provided in the regional consultation, and given that the efforts made by the States to advance respect and guarantees for the rights of older persons have been insufficient to eradicate the historical and structural discrimination against them, the IACHR considered it necessary to highlight and raise awareness of their rights. It is necessary to create regional awareness of the dearth of public policies with an age-sensitive approach and of legislation that addresses the needs of older persons as a vulnerable group, as well as the lack of institutions framework and the limited resources available to attend to the special protection needs of older persons in the Americas.
20. Thus, in light of inter-American standards and the international *corpus iuris* on the subject, this thematic report describes the main concerns regarding the elderly in the region, identifying emerging issues and pending challenges, but also highlighting sound state practices regarding national protection systems.
21. This report also highlights the pressing need for the States of the region to adopt legislation, policies, and practices, and to create specialized institutions for the adequate protection of the elderly, in accordance with international standards. Accordingly, the report is intended to offer technical assistance to both States and civil society organizations and human rights defenders, since it can be used to prepare diagnostic assessments and serve as a basis for national protection systems, as well as for lobbying work. The conclusions and recommendations of this report seek to contribute to the development of national action plans and institutions that address the special protection needs of older persons in the OAS member states, in light of the Convention on Older Persons.

## B. Methodology

22. In methodological terms, for the preparation of this report, the IACHR conducted a public consultation and requested responses to a questionnaire based on the main issues and challenges identified in the first Regional Public Consultation on the rights of older persons held in Montevideo, Uruguay in 2017. The questionnaire was disseminated via the IACHR website

from November 27, 2018 to January 31, 2019.<sup>5</sup> It consisted of 24 questions and focused on the challenges and best practices of OAS member states in recognizing and effectively guaranteeing the rights of older persons. The Committee received 33 replies from 20 countries: 16 state responses<sup>6</sup>; 4 national human rights institutions<sup>7</sup>; 11 civil society organizations<sup>8</sup>; 2 persons, including one deprived of liberty, who referred to their individual cases.

23. The responses to the questionnaire constitute the main input for the analysis in this report. The report has also been prepared in light of the information that the Commission has been able to gather in its monitoring of the situation of older persons in the region and through its various mechanisms, such as precautionary measures, public hearings, country visits, and other requests for information pursuant to Article 41 of the American Convention on Human Rights (hereinafter "the American Convention" or "the ACHR") and Article 18 of its Statute; as well as the information available from other public sources, specialized doctrine, and the decisions and recommendations of international organizations, among others.

### C. Structure of the report

24. The report is organized into five chapters. Chapter 1 briefly describes the regulatory and institutional background of the inter-American system with respect to the rights of older persons. Thus, it mentions international standards, declarations, resolutions, and other instruments reflecting the response of the inter-American system to the situation of the elderly. This chapter also includes a presentation on the treatment of the rights of this segment of the population within the framework of the universal human rights system (hereinafter "the universal system" or "the UHRS").
25. Chapter 2 contains a detailed analysis of the norms set forth in the Inter-American Convention on Protecting the Rights of Older Persons and the standards it has established. In particular, the IACHR refers to the prohibition of discrimination on the grounds of old age, to life with dignity, informed consent, and the right to health, pension, and retirement rights, deprivation of liberty, and protection in humanitarian situations such as the COVID-19 pandemic.
26. In chapter 3, the IACHR presents information related to the obligation of the States of the Americas to have national systems for the protection of the human rights of older persons. As well as, in addition to providing a general overview of the region regarding the evolution

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<sup>5</sup> [Cuestionario de Consulta para la elaboración de informe sobre sistema nacionales de protección de los derechos de las personas mayores en América \(Consultation Questionnaire for the preparation of a report on national systems for the protection of the rights of the elderly in the Americas\)](#).

<sup>6</sup> From the States of Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Honduras, Jamaica, Mexico, Paraguay, Peru, Trinidad and Tobago, Uruguay, Dominica, and Saint Vincent and the Grenadines.

<sup>7</sup> Argentina, Guatemala, Mexico, and Peru.

<sup>8</sup> Civil society organizations from Argentina, Bolivia, Chile, Colombia, Costa Rica, El Salvador, the United States, and Venezuela. .

of national institutions related to the protection of this population group with an age-sensitive approach; and presents a brief analysis of the information collected on this matter.

27. In Chapter 4, the Commission presents international human rights standards as interpreted and applied to the situation of older persons. The standards are formulated based on principles developed by international human rights protection bodies, especially those of the inter-American system. Thus, the IACHR has taken as its basis the American Declaration of the Rights and Duties of Man in line with other inter-American treaties, especially the Convention on Older Persons, which crystallizes the obligations of the OAS States towards older persons. Based on these determinations, and on the information provided by the States, the Commission then refers to the existing national protection systems for protecting the rights of older persons in the region, highlighting certain experiences that may serve as examples for other States. The information is analyzed and structured around the following sets of rights: equality and non-discrimination on the basis of age; health and informed consent in health matters; independence and autonomy; participation, community integration, accessibility and personal mobility; freedom of expression and opinion and access to information; food, water, sanitation, and housing; social security; security in general, a life free from any kind of violence and the right not to be subjected to torture and cruel, inhuman, and degrading treatment or punishment against older persons; access to justice; and, access to care and rights of those receiving care.
28. Finally, in Chapter 5, the Commission presents its conclusions and recommendations.





## **Chapter 1**

The inter-American system's  
approach to protecting the  
human rights of older persons

## THE INTER-AMERICAN SYSTEM'S APPROACH TO PROTECTING THE HUMAN RIGHTS OF OLDER PERSONS

29. The major milestone with respect to protection of the rights of older persons in the Inter-American system is the adoption and entry into force of the Convention on Older Persons. However, there are a number of precedents that demonstrate that the issue of the protection of this population has not been alien to the work of the Inter-American system or the Inter-American Commission. Accordingly, this chapter will describe the IACHR's approach to the rights of older persons, as well as the existing mechanisms and instruments on the subject within the OAS.

### 1.1. The IACHR and protection of the rights of older persons

30. In May 2017<sup>9</sup> the Commission created the Unit on the Rights of Older Persons, in response to the demands for the promotion and monitoring of the rights of older persons triggered by the adoption of the Convention on Older Persons and based on a regional diagnostic assessment which highlighted the fact that protecting the rights of the elderly continued to be a priority challenge in the region and one that called for close follow-up by the Commission. The Unit was created with the mandate to promote, protect, and ensure recognition of the human rights of the elderly, by identifying legislative measures, public policies, programs, and actions to guarantee unrestricted exercise of the human rights of the elderly, including their full inclusion and participation in society.

31. In addition to the above, towards the end of 2015 and during 2016, the IACHR began broad-based discussion of its Strategic Plan for 2017-2021. In this Plan, through a process of discussion and participation conducted throughout the region, it was decided to include new special interest groups of the population as a priority for the development of its projects and programs. In that context, the Commission determined that the elderly would be a priority population in its Strategic Plan with a view to identifying synergies to advance in the construction of Inter-American standards regarding this segment of the population, promoting their rights, and addressing the issue in its system of cases, precautionary measures, hearings, and monitoring activities<sup>10</sup>.

32. In February 2019, in order to broaden and deepen its monitoring in this area, and based on the provisions of its Strategic Plan, the IACHR converted the Unit into the Thematic Rap-

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<sup>9</sup> During its 162nd regular session, held in Buenos Aires, Argentina, in May 2017.

<sup>10</sup>IACHR, [Strategic Plan 2017–2021](#), OEA/Ser.L/V/II.161. Doc. 27/ 17, March 20, 2017, p. 36.

porteurship on the Rights of Older Persons.<sup>11</sup> The Rapporteurship has the mandate to promote, protect, and ensure the recognition of the human rights of older persons in the region, as full subjects of rights (*sujetos plenos de derecho*). This includes preventing age discrimination or ageism against the elderly, as well as intersectional discrimination based on gender, sexual orientation, gender identity, ethnic-racial affiliation, disability, poverty, extreme poverty or social marginalization, nationality, religion, imprisonment (situation of deprivation of liberty), migratory status, or statelessness.

33. The IACHR has paid increasing attention to the situation of older persons in the region through its system of cases and petitions, precautionary measures, and through its monitoring mechanism, through hearings and visits, and by including the issue in its various reports.
34. Likewise, the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "I/A Court H.R."), prior to the entry into force of the CPM, had referred on several occasions in its case law to the rights of the elderly and their situation of vulnerability, as detailed below. Since the adoption of this Convention, the I/A Court of H.R. has defined human rights standards for the elderly with greater precision, and has used the CPM as a parameter of interpretation for the protection of this segment of the population.

## 2.2. Addressing the situation of the elderly in the inter-American system

35. Prior to the adoption of the Convention on Older Persons, the inter-American system had already embraced some international legal norms that provide specific protections for older persons. Those norms that were already part of the corpus of inter-American law, together with other contributions from States, specialists, and civil society organizations, as well as from human rights protection bodies of the IAHRs, were the basis for drawing up the Convention on Older Persons in 2015. Thus, the CPM is the result of a process of interaction between these advances and developments in the Americas, shaped by pre-existing international norms, as well as by other inter-American instruments such as resolutions, declarations, and even working groups on the subject. In this section, the Commission will briefly review this background before referring specifically to the Convention on Older Persons in the following chapter.

### A. Inter-American human rights standards that refer to the situation of older persons

36. Prior to the adoption of the CPM, the inter-American system already had some protections for the elderly. Although the approach was far from embodying all the principles that, according to international human rights law, should govern plans and programs for the exercise of the rights of the elderly, the existence of those standards reveals that, since its inception, the OAS has never been indifferent to the protection needs of this segment of the population. In that regard, the Commission notes that the American Declaration of the

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<sup>11</sup>IACHR, Press release No. 38/19, "IACHR Concludes 171st Period of Sessions," February 20, 2019.

Rights and Duties of Man (hereinafter "the American Declaration" or "the ADRDM"), the American Convention, the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (hereinafter "the Protocol of San Salvador" or "the PSS") and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "the Convention on Belém do Pará" or "the CBP") all contain references to protection of the elderly. It is worth noting that, in accordance with its rules of procedure and the precedents of the IAHR, the full normative value of the American Declaration has been confirmed by the I/A Court H.R., and it is therefore considered a source of legal obligations.<sup>12</sup>

37. Article XVI of the American Declaration provides, regarding the right to social security, "Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living." The Commission notes that this formulation refers to "the consequences" of aging as a negative connotation that today must be interpreted in an updated way under the new paradigm of autonomous aging, developed later in this report.
38. Likewise, Article 4(5) of the American Convention prohibits the application of the death penalty to persons who, at the time of the commission of the crime, were over seventy years of age. For its part, the Protocol of San Salvador, in terms similar to the ADRDM, establishes in Article 9.1 the right of every person to social security to protect him/her against the consequences of old age. Article 17 of the Protocol also establishes the obligation of States to progressively adopt measures aimed at guaranteeing special protection for the elderly. This special protection must be addressed by States complying with the following obligations: a) to provide adequate facilities, as well as food and specialized medical care to the elderly who lack them and are not in a position to provide them for themselves; b) to implement specific labor programs aimed at granting the elderly the possibility of performing a productive activity appropriate to their capabilities, respecting their vocation or wishes; and c) to stimulate the formation of social organizations aimed at improving the quality of life of the elderly.<sup>13</sup>
39. Along these lines, the Belém do Pará Convention establishes a general intersectional obligation to take into consideration the additional vulnerabilities that exacerbate the phenomenon

<sup>12</sup>I/A Court H.R. I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989 [hereinafter "Interpretation of the American Declaration"], par. 43, ("the member states have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.").

<sup>13</sup>IACHR, "Perspective of the Inter-American Commission on Human Rights of the Organization of American States (OAS)" regarding the draft Inter-American Convention on the Human Rights of Older Persons, OEA.Ser.G CAJP/GT/DHPM-114/13, November 18, 2013 (presented at the November 8, 2013 session in response to the request made by the President of the CAJP)

of violence against women. Accordingly, Article 9 of that Convention provides that "(...) States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom." In these terms, the CBP finds that violence against older women should be addressed in a differentiated manner by the States.

## B. Towards the construction of an inter-American instrument for the protection of the elderly: OAS resolutions, declarations, and documents

40. The Commission notes that in several OAS bodies there is growing concern about negative impacts that specifically affect the elderly. Initially, what drew most attention were the violations to which they were exposed due to regional phenomena such as human mobility or the exploitation of indigenous labor. Subsequently, a series of works and resolutions were adopted at the OAS with a more comprehensive purpose, which highlighted the need for the formulation of an inter-American instrument for the protection of older persons. The IACHR will now refer to the main OAS documents and instruments that precede the CPM.
41. In relation to the emergence of concerns about the elderly in connection with broader human rights violations, the IACHR notes references to them by various OAS bodies. In this regard, it is worth noting OAS General Assembly Resolution [AG/RES. 1971 \(XXXIII-O/03\)](#) "The Protection of Refugees, Returnees, and Stateless and Internally Displaced Persons in the Americas," which resolved to urge States to adopt measures to make international protection of asylum and refugee status more effective in view of the particularly vulnerable situation of the elderly.
42. Along the same lines, the IACHR notes that, from its very first drafts<sup>14</sup>, the discussions surrounding the [American Declaration on the Rights of Indigenous Peoples approved by resolution AG/RES.2888 \(XLVI-O/16\)](#) address the situation of the human rights of indigenous older persons. Thus, this concern was reflected in Article XXVII of the Declaration as part of the commitment to adopt immediate and effective measures to eliminate exploitative labor practices against a variety of protected groups, including indigenous older persons.
43. In terms of the specific protection of older persons in a comprehensive manner, the Commission notes two important resolutions. Thus, the Declaration of Commitment of Port of Spain, within the framework of the Summits of the Americas process, already embodied the commitment of the political representatives of the Americas to continue "working to in-

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<sup>14</sup> OAS Permanent Council, Committee on Juridical and Political Affairs, Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples, OEA/Ser.K/XVI, GT/DADIN/doc.255/06 rev.2, of April 13, 2007.

corporate issues relating to aging in public policy agendas."<sup>15</sup> Based on that Commitment, in 2009, the OAS General Assembly adopted resolution AG/RES 2455 (XXXIX-O/09), of June 4, 2009 in which it voiced "(...) its concern over the lack of studies and reports at the hemispheric level on specific institutions and mechanisms related to the problems of older persons, especially violations and infringements of their rights, which make it imperative to create an instrument to address those needs." It also instructed various OAS bodies to begin exploring the possibility of an international treaty on the rights of the elderly.

44. As a follow-up to the above, the following year, the OAS General Assembly, through resolution AG/RES. 2562 (XL-O/10) "Human Rights and Older Persons" of June 8, 2010 instructed the Permanent Council to convene a meeting of experts to examine the feasibility of drafting an inter-American convention on the rights of older persons. In that resolution, the General Assembly again noted that "population aging is a complex age-related reality that poses new challenges for states with respect to the particular way in which the specific needs of the elderly are addressed, and the need for their rights to be the subject of special international promotion and protection."
45. All of the above paved the way for the adoption of an international instrument on the subject. Thus, in 2011, the working group was established to protect the human rights of older persons. It comprised national representatives and experts from the academic sector and civil society, as well as from international organizations and specialized agencies, and was intended to prepare a special report on the situation of older persons in the Hemisphere and the effectiveness of binding regional and universal human rights instruments to protect the rights of the elderly, and to prepare a draft inter-American convention for the protection and promotion of the rights of older persons.
46. In 2013, the IACHR presented a report<sup>16</sup> to the OAS Permanent Council, in which it set out considerations on the protection of the elderly, so that the Working Group on Protecting the Human Rights of Older Persons, responsible for drafting the Convention on Older Persons, could use inter-American standards and the perspective of the IACHR as inputs for drafting the Convention.
47. In this report the Commission specifically addressed such issues as: (a) the State as the entity chiefly responsible for guaranteeing the observance of human rights; (b) the principle of equality and non-discrimination; (c) legal capacity as a tool for the exercise of the human rights of older persons; (d) informed consent and access to information; (e) the autonomy

<sup>15</sup> Fifth Summit of the Americas, Declaration of Commitment of Port of Spain, Port of Spain, Trinidad and Tobago, April 19, 2009, par. 41.

<sup>16</sup> IACHR, "[Perspective of the Inter-American Commission on Human Rights of the Organization of American States \(OAS\)](#)" regarding the draft [Inter-American Convention on the Human Rights of Older Persons](#), OEA.Ser.G CAJP/GT/DHPM-114/13, November 18, 2013 (presented at the November 8, 2013 session in response to the request made by the Chair of the CAJP).

of older persons and their right to live independently and in the community; (f) the general duties of States with respect to all human rights and measures to ensure their progressive realization (*medidas de progresividad*); (g) judicial guarantees; and (h) monitoring mechanisms and the justiciability of economic, social, and cultural rights.

48. After a long process and with the technical support of the Pan American Health Organization (PAHO), the Economic Commission for Latin America and the Caribbean (ECLAC), and the IACHR, the Working Group completed the drafting and approval of the preliminary texts on May 7, 2015.<sup>17</sup> Decree Law No. 19.430 adopting Inter-American Convention on Protecting the Human Rights of Older Persons.<sup>18</sup> In the following chapter, the IACHR will provide a detailed account of its regulatory and institutional content and protection mechanisms.

### 1.3 Other international instruments of a universal nature relating to older persons

49. In some international instruments of a universal nature, protection of the rights of the elderly is based on a general, intersectional prohibition of discrimination, while others refer directly and comprehensively to the situation of the elderly. Accordingly, the treaties and pronouncements of different committees refer to the exacerbation of discrimination against certain vulnerable groups (women, migrant workers or people with disabilities, for example) when the people who make up those groups are older persons. Likewise, in armed conflicts, international standards require additional protections based on age criteria.
50. As regards universal treaties, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was the first United Nations treaty to explicitly prohibit age as a ground for discrimination, specifically in the case of access to social security in old age. The scope of the prohibition of age-based discrimination was subsequently expanded in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and, subsequently, in the Convention on the Rights of Persons with Disabilities (2006), in relation to issues such as the elimination of prejudice, stereotypes, and harmful practices, access to justice, and protection from exploitation, violence, and abuse.<sup>19</sup>
51. For its part, the Committee on the Elimination of Discrimination against Women has paid particular attention to the situation of older women in its concluding observations on the periodic reports of some States parties, including issues such as violence against them, education, illiteracy, and access to social benefits. In its decision 26/III of July 5, 2002, the Committee recognized that the Convention "is an important instrument for addressing the

<sup>17</sup> OAS, Permanent Council, [Draft Inter-American Convention on Protecting the Human Rights of Older Persons](#), OEA.Ser.G CAJP/GT/DHPM-145/14 rev.18 corr.3, May 7, 2015

<sup>18</sup> [Inter-American Convention on Protecting the Human Rights of Older Persons](#), adopted at the Forty-Fifth Regular Session of the OAS General Assembly, Washington D.C., United States, June 15, 2015; entry into force on January 11, 2017.

<sup>19</sup> CELADE. [The Rights of the Elderly: Study and Outreach Materials](#) June 2011, Module 2, pp. 3.

issue of the human rights of older women." General Recommendation 25, on Article 4, paragraph 1, of the Convention ("temporary special measures"), also recognizes that age is one of the grounds on which women may suffer multiple forms of discrimination.

52. In December 2010, the Committee adopted General Recommendation 27 on older women and the protection of their human rights. It highlights the multiple forms of discrimination faced by women as they age and explains the content of the obligations that States Parties must assume with respect to aging with dignity and the rights of older women. Policy recommendations are also made to incorporate responses to older women's concerns in national strategies, development initiatives, and positive measures so that they can participate fully in society, without discrimination, and on an equal footing with men.<sup>20</sup> Within the framework of the United Nations, efforts to move towards the adoption of a Universal Convention on the Rights of Older Persons are still ongoing within the Open-Ended Working Group on Ageing (OEWG), which was created in 2010.<sup>21</sup>
53. With regard to the standards of international humanitarian law, there are also protections for the population not participating in hostilities in the framework of armed conflicts of an international or non-international nature. With respect to the former, Article 14 of the Fourth Geneva Convention of 1949 stipulates the obligation of the parties to the conflict to establish hospital and safety zones and localities to protect, among other protected persons, "aged persons" from the effects of war. Along the same lines, Article 17 of this instrument provides that the parties to the conflict must enter into agreements for the evacuation of protected persons, including the elderly. With regard to non-international armed conflicts, Article 3 of the Geneva Conventions provides in general that persons not taking direct part in hostilities shall be treated humanely without distinction of any kind, such as race, color, religion, creed, sex, birth, wealth, or any other similar criteria. Although older persons are not explicitly mentioned, the 1993 Vienna Declaration and Program of Action called on States and parties to conflict to respect humanitarian norms and to avoid human rights violations against older persons.<sup>22</sup>
54. The Commission also notes the existence of a series of universal instruments that address the rights of older persons in a comprehensive manner. Thus, also worth noting are, *inter alia*, the International Plan of Action on Ageing adopted by the World Assembly on Ageing (1982), the United Nations Principles for Older Persons (1991), the Proclamation on Ageing (1992), and the Madrid Political Declaration and International Plan of Action on Ageing (2002). Since the initial documents, concern for the situation of the rights of the elderly has focused on their independent and autonomous life, participation and social integration, adequate care, self-realization, and development of their potential, and a life free from vio-

<sup>20</sup> [UN.CEDAW, General Recommendation No. 27 on older women and protection of their human rights, 2010](#)

<sup>21</sup> [Open-ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons.](#)

<sup>22</sup> World Conference on Human Rights, Vienna Declaration and Program of Action, 25 June 1993, para. 29.



lence and discrimination. These instruments are the initial starting point that eventually led to better disseminated, more in-depth, more advanced, and specialized studies.

55. The IACHR has ascertained that such declaratory instruments fostered the analysis of the rights of older persons and their interaction with different situations and global problems, always starting from the problem of ageism as a criterion that triggers discrimination.<sup>23</sup> Thus, for example, the Office of the High Commissioner for Human Rights has reported on the promotion and protection of the rights of older persons given the disproportionate impact of climate change on their circumstances and contexts.<sup>24</sup> Along these lines, the Independent Expert on the enjoyment of all human rights by older persons has periodically reported on the situation of this segment of the population,<sup>25</sup> as well as on the situation of older persons deprived of their liberty for committing crimes, for migration status, and under the control and supervision of institutions and care mechanisms, including those provided in the framework of services to safeguard families,<sup>26</sup> among other issues such as disability, extreme poverty, or the right to health.<sup>27</sup>
56. Finally, the report "Normative standards and obligations under international law regarding the promotion and protection of the human rights of older persons" by the United Nations High Commissioner for Human Rights, starts from the premise that older persons are subjected to discrimination and harmful effects due to ageism. It also identifies the limitations, shortcomings, and gaps in international human rights law to address the situation of older persons and the impact on their rights, such as the lack of attention paid to their right to education, ageist bias in the design of sustainable social security systems, corporate responsibility towards older persons, among other cross-cutting situations such as the use of personal data, science and technology, digitization, social inclusion, among others.<sup>28</sup>

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<sup>23</sup> World Health Organization/Pan American Health Organization, World Report on Ageism,

<sup>24</sup> Human Rights Council, "Analytical study on the promotion and protection of the rights of older persons in the context of climate change", Forty-seventh session 21 June-9 July 2021, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, "Analytical study on the promotion and protection of the rights of older persons in the context of climate change" A/HRC/47/46, 30 April 2021.

<sup>25</sup>See: Human Rights Council, Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler, 48th session, 13 September-1 October 2021, Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development, A/HRC/48/53, 4 August 2021 and earlier.

<sup>26</sup> Human Rights Council, "Older persons deprived of their liberty. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler", 51st session 12 September-7 October 2022, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/51/27, 9 August 2022.

<sup>27</sup>See: A/74/186, A/HRC/14/31 and A/HRC/18/37.

<sup>28</sup> HRC, Normative Standards and Obligations under International Law Regarding the Promotion and Protection of the Human Rights of Older Persons. Report of the High Commissioner for Human Rights, A/ HRC/49/70", 9 March 1998.



## **Chapter 2**

The inter-American convention on protecting the human rights of older persons: new paradigms and compliance mechanisms

## THE INTER-AMERICAN CONVENTION ON PROTECTING THE HUMAN RIGHTS OF OLDER PERSONS: NEW PARADIGMS AND COMPLIANCE MECHANISMS

57. Based on the above-mentioned legacy acquired by the IACHR, on June 15, 2015, by means of resolution [AG/RES.2875 \(XLV-O/15\)](#), the OAS General Assembly adopted the Inter-American Convention on Protecting the Human Rights of Older Persons. Costa Rica was the first State to ratify this instrument on June 28, 2016 and with the second instrument of ratification deposited by Uruguay the treaty entered into force on January 12, 2017. As of the date this report was approved, the Convention had been ratified by nine States.<sup>29</sup> The Convention was adopted to promote, protect, and ensure the acknowledgment, full enjoyment, and exercise, on an equal footing, of all human rights and fundamental freedoms of older persons, in order to contribute to their full inclusion, integration, and participation in society.
58. In this chapter, the IACHR will analyze the content of the CPM taking into consideration its normative content with emphasis on the innovations that this treaty introduces for international human rights law for the protection of the human rights of older persons. The Commission will also report on its institutional follow-up mechanisms, as well as its links with the ISHR case and petition system. Finally, the Commission will describe the progress made by the organs of the inter-American system in the formulation of standards for older persons based on the Convention on Older Persons.

### 2.1 The Inter-American Convention on Protecting the Human Rights of Older Persons and inter-American system standards

59. In this section, the Commission will address the main international obligations and regulatory innovations for protecting older persons derived from the CPM. Accordingly, the IACHR will refer to the object and purpose of the treaty, relevant definitions, and general principles. It will then refer to the normative contents and the rights protected under the treaty and to the concomitant obligations for the States Parties. It will also address follow-up and protection mechanisms in the event of violations of the Convention.
- A. Object and purpose, definitions, and general principles
60. The object and purpose of the CPM are described as follows: “(...) to promote, protect and ensure the recognition and the full enjoyment and exercise, on an equal basis, of all human rights and fundamental freedoms of older persons, in order to contribute to their full inclu-

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<sup>29</sup>Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Peru, and Uruguay, See OAS, [Status of Signatures and Ratifications of the Convention on the Rights of Older Persons](#).

sion, integration, and participation in society.”<sup>30</sup> Accordingly, the Commission observes that the object and purpose of the treaty require not only guarantees inherent to the exercise of human rights. They also require addressing the need to establish equality and eradicate discrimination in the lives of the elderly, not only in formal terms, but also in material terms. In other words, they must be included and integrated into society.

61. The Convention on Older Persons also establishes numerous definitions. They deal with the phenomena - both positive and negative - surrounding aging as a human experience. Thus, the treaty contains definitions of , inter alia, "abandonment/neglect", "palliative care", "aging", "active and healthy aging", "mistreatment".
62. However, the Commission finds it innovative that the CPM has three definitions of discrimination. The first is the classic definition of discrimination, which identifies a series of actions ("distinction, exclusion, restriction") that seek to nullify or restrict a human right. The second definition is called "multiple discrimination" indicating that this occurs when discrimination against an older person is based on "two or more discriminatory factors." For the Commission, the term "multiple discrimination" is similar to the concept of "intersectional discrimination" already recognized by various bodies in the inter-American system.<sup>31</sup> The third definition explicitly refers to "age discrimination in old age", which is the result of the application of the classic notion of discrimination, in which age is specified as the basis for discrimination.<sup>32</sup>
63. For the Commission, the explicit determination of age as a criterion for the practice of discriminatory differences is an advance in inter-American international law. Other international human rights protection bodies have pointed out that, in fact, historically, there have been few references to age as a factor that generates discrimination in international norms.<sup>33</sup> Despite the above, equality clauses are loosely worded, thereby suggesting that the lists of criteria for discrimination are not exhaustive; rather, their wording includes "any other social condition"<sup>34</sup>as a prohibited ground for discrimination, which could include age. In this regard, the Office of the High Commissioner has noted that "(...) these general provisions on age discrimination have not generally been used to address ageism more broadly in the practice of existing human rights treaty mechanisms, and the term “ageism”

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<sup>30</sup> CPM, Article 1.

<sup>31</sup> IACHR, [Compendium on equality and non-discrimination](#). Inter-American Standards, OEA/Ser.L/V/II.171, Doc. 31, February 12, 2019, paras. 42 ff; I/A Court H.R., Case of V.R.P., V.P.C., et al v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350.

<sup>32</sup> CBP, Article 2.

<sup>33</sup> HRC, Normative Standards and Obligations under International Law in Relation to the Promotion and Protection of the Human Rights of Older Persons. Report of the High Commissioner for Human Rights, A/ HRC/49/70, 9 March 1998, para. 17. "A striking feature of the international human rights framework is that there is no explicit guarantee against being subjected to discriminatory treatment based on ageism, and no explicit obligation on States to take active measures to eliminate ageism and its discriminatory consequences (...)"

<sup>34</sup> ACHR, Article 1.1.; ICCPR, Article 2.1.

rarely features, other than in reports of the Independent Expert and of the Special Rapporteur on the rights of persons with disabilities."<sup>35</sup>

64. Another important definition contained in the Convention on Older Persons is precisely the definition of an older person. The treaty contains the following definition of an older person: "A person aged 60 or older, except where legislation has determined a minimum age that is lesser or greater, provided that it is not over 65 years. This concept includes, among others, elderly persons." As social studies show, the elderly are "a heterogeneous and complex population, active and capable of deciding about their lives, although in a situation of crisis and conflict mainly due to the large number of social prejudices about old age that, when crossed with other variables such as ethnicity, gender, or economic situation can put the individual in a situation of vulnerability."<sup>36</sup> The elderly population is a diverse group of individuals who are full subjects of rights, each of whom has his or her particular and different problems.<sup>37</sup> Thus, the definition of an elderly person is sufficiently flexible to adapt to the domestic regulations of the States of the Americas under the parameters set forth in the Convention.
65. In light of the above, the CPM adopts its own interpretation of the meaning of age in international human rights law in view of the lack of an explicit definition in the discrimination clauses. Moreover, this definition of discrimination has already been used by ISHR bodies in the case of individual petitions, as indicated below.
66. Now, as regards the general principles applicable to the Convention, the Commission observes criteria whose formulation in terms of the rights of older persons find their origin in the first documents of the IAHRS and the UHRS. In this sense, the IACHR emphasizes that the CPM includes as principles the "dignity, independence, protagonism, autonomy"<sup>38</sup> and "self-realization" of the elderly.
67. For the IACHR, from a regulatory point of view, these principles introduce a legitimate obligation and expectation of change with respect to the social position of older persons in Latin American states and societies. Accordingly, the CPM proposes a paradigm shift from viewing old age as a problem and the elderly as a social burden to the recognition of people as subjects of rights. Thus, the Convention also recognizes the need to "address matters of old age and ageing from a human rights perspective that recognizes the valuable

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<sup>35</sup> HRC, Normative Standards and Obligations under International Law in Relation to the Promotion and Protection of the Human Rights of Older Persons. Report of the High Commissioner for Human Rights, A/ HRC/49/70, 9 March 1998, para. 17.

<sup>36</sup> Blouin, C. (Coord.), *La situación de la población adulta mayor en el Perú: Camino a una nueva política*. Lima, Peru: Institute of Democracy and Human Rights of the Pontificia Universidad Católica del Perú. 12. (Ramos Bonilla 2013: 110).

<sup>37</sup>Cf. Blouin, C. (Coord.), *La situación de la población adulta mayor en el Perú: Road to a new policy*. Lima, Peru: Institute of Democracy and Human Rights of the Pontificia Universidad Católica del Perú. 12.

<sup>38</sup> CPM, Article 3.c) and 3.h).

current and potential contributions of older persons to the common good, to cultural identity, to the diversity of their communities, to human, social, and economic development, and to the eradication of poverty."<sup>39</sup>

68. The Convention embodies the change of paradigm with respect to old age, which views older persons as full subjects of rights and active citizens who have a valuable role in society and contribute to its development, leaving behind the perception of older persons as a group in a situation of vulnerability only because of their age.<sup>40</sup> This paradigm shift can also be traced back to the United Nations Principles, in which States expressed their awareness of "scientific research disproving many stereotypes about inevitable and irreversible declines with age." Accordingly, the IACHR observes that this paradigm shift is so well-established that it permeates any type of interpretation of the norms, always favoring realization of the rights of older persons and justifying any type of application of a differentiated approach in the deployment of state protections.
69. In addition to the stereotypes associated with age, other factors such as illness, poverty, social marginalization, and abandonment, among others, generate a differentiated impact and vulnerability during old age. However, the IACHR indicated in its report for the drafting of the Convention "to reflect on the relevance of not associating the definition of old age to that of vulnerability in itself, but to limit this qualifier to those situations in which particular conditions of the elderly person (e.g., physical, mental or intellectual disability and lack of access to basic needs, among others) expose them to additional factors of risk of human rights violations" this does not mean that age itself is not in reality a direct cause of discrimination as will be explain below."<sup>41</sup>
70. Thanks to the Convention, the States embrace this new paradigm with respect to the perception that governments and societies have towards the elderly and move from a vision of older persons as mere subjects of protection to one in which the elderly are regarded as full subjects of rights.<sup>42</sup> This involved a shift away from notions of passivity, illness, and dependence, which were usually associated with old age, to a dynamic approach are envis-

<sup>39</sup> Preamble, Inter-American Convention on Protecting the Human Rights of Older Persons.

<sup>40</sup> United Nations, [AG Resolución 46/91, 16 December 1991](#).

<sup>41</sup> IACHR, "Perspective of the Inter-American Commission on Human Rights of the Organization of American States (OAS)" regarding the draft Inter-American Convention on the Human Rights of Older Persons, OEA.Ser.G CAJP/GT/DHPM-114/13, November 18, 2013 (presented at the November 8, 2013 session in response to the request made by the President of the CAJP).

<sup>42</sup> Mora, T. and Herrera, F. (Ed.), [Convención Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores: análisis de brechas legislativas y propuestas para su implementación en Chile \(Inter-American Convention on the Protection of the Human Rights of Older Persons: analysis of legislative gaps and proposals for its implementation in Chile\)](#). Santiago : Ediciones Servicio Nacional del Adulto Mayor, 2018. Sanchez Piazza, J. Cambios de paradigmas en la protección de los derechos humanos de las personas mayores (Paradigm shifts in the protection of the human rights of the elderly), p. 55.

aged as living a full, independent, and autonomous life, with health, security, integration, and participation in the economic, social, cultural, and political spheres of their societies.<sup>43</sup>

71. For the IACHR, ratifying or acceding to the Convention on Older Persons implies that States assume international obligations that entail challenges in terms of the effective implementation of the instrument. Responsibility for carrying out this paradigm shift in a State includes a positive obligation to create or adapt regulations, public policies, and practices, as well as the institutional framework, in coordination with each other and hand in hand with the cultural change required for this new vision of old age.<sup>44</sup> That is the framework needed to make the paradigm shift, namely implementation of the obligation of States to recognize, respect, protect, and promote human rights, while at the same time refraining from transgressing, violating, and/or harming them.<sup>45</sup> This is the horizon that the Commission envisions for older persons exercising the rights established in the Convention as full subjects.
72. The CPM is an instrument that offers explicit recognition of a series of rights for this segment of the population that reinforces and complements what is included in the general norms. In addition, the Convention on Older Persons defines means by which States can fulfill their obligations towards older persons. This instrument also allows States to standardize their norms, policies, and practices in order to establish and improve national protection frameworks. In addition to being a tool for the promotion of effective public policies, it raises social awareness at the national level for the exercise of the human rights of this population.<sup>46</sup>

## B. Rights and freedoms of older persons recognized in the CPM

73. The Convention on Older Persons is the first and only legally binding international instrument that declares the rights of older persons in a broad and comprehensive manner, in addition to presenting an innovative and explanatory catalog of rights that also includes mechanisms for monitoring their implementation, technical advice, and justiciability in the IAHRs. The rights set forth in the CPM refer to the needs of the elderly based on their age, which extends the application of rights previously not applied to the elderly and innovates

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<sup>43</sup> CPM, preamble.

<sup>44</sup>Cf. IPPDH, [Personas mayores: hacia una agenda regional de derechos \(Older persons: towards a regional rights agenda\)](#), 2016 p. 28.

<sup>45</sup> Waldo Arriagada Peñailillo, [Derechos Humanos y Políticas de Protección Social del Adulto Mayor](#), p. 1.

<sup>46</sup>Cf. IPPDH, [Personas mayores: hacia una agenda regional de derechos \(Older persons: towards a regional rights agenda\)](#), 2016, pp. 28 and 50-51.

by adding other rights<sup>47</sup> derived from provisions developed by IAHR bodies, such as, for example, the right to a dignified life<sup>48</sup> or to live a life free from violence.<sup>49</sup>

74. Thus, the Convention includes a catalog of rights homologous to those contained in the ACHR and the PSS. Thus, the Convention on Older Persons calls for the prohibition of discrimination on the grounds of old age<sup>50</sup>; life and life with dignity<sup>51</sup>; freedom from torture and other cruel, inhuman, or degrading treatment or punishment<sup>52</sup>; personal freedom<sup>53</sup>; freedom of expression and access to information<sup>54</sup>; nationality and freedom of movement<sup>55</sup>; to privacy and intimacy<sup>56</sup>; to social security<sup>57</sup>; to work<sup>58</sup>; to education<sup>59</sup>; to culture<sup>60</sup>; to recreation, leisure and sports<sup>61</sup>; to property<sup>62</sup>; to housing<sup>63</sup>; to a healthy environment<sup>64</sup>; to politi-

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<sup>47</sup>Cf. Mora, T. and Herrera, F. (Ed.), [Convención Interamericana sobre la protección de los derechos humanos de las Personas Mayores: análisis de brechas legislativas y propuestas para su implementación en Chile \(Inter-American Convention on the Protection of the Human Rights of Older Persons: analysis of legislative gaps and proposals for its implementation in Chile\)](#). Santiago : Ediciones Servicio Nacional del Adulto Mayor, 2018. Huenchuan, S., Avance en la ratificación de la Convención Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores en los países de la región, pp. 27 - 30.

<sup>48</sup>Corte IDH. Caso Comunidad Indígena Sawhoyamaya Vs. Paraguay. Fondo, Reparaciones y Costas. Sentencia de 29 de marzo de 2006. Serie C No. 146, párr. 153.

<sup>49</sup> CBP, Article 3.

<sup>50</sup> CPM, Article 5.

<sup>51</sup> CPM, Article 6.

<sup>52</sup> CPM, Article 10.

<sup>53</sup> CPM, Article 13.

<sup>54</sup> CPM, Article 14.

<sup>55</sup> CPM, Article 15.

<sup>56</sup> CPM, Article 16. It should be noted that the adequate protection of the elderly specifically includes privacy in their personal hygiene.

<sup>57</sup> CPM, Article 17. It should be noted that adequate protection of the elderly specifically includes promotion of formal employment and regulation of the different forms of self-employment and domestic employment, with a view to preventing abuses and guaranteeing adequate social coverage and the recognition of unpaid work, as well as the gradual transition to retirement.

<sup>58</sup> CPM, Article 18.

<sup>59</sup> CPM, Article 20.

<sup>60</sup> CPM, Article 21.

<sup>61</sup> CPM, Article 22.

<sup>62</sup> CPM, Article 23.

<sup>63</sup> CPM, Article 24. It is to be noted that adequate protection of the elderly specifically emphasizes the need to ensure that the elderly have access to integrated social and health services and home care services that enable them to reside in their own homes if they so wish, and to provide facilities for architecturally accessible and economically affordable housing solutions.

<sup>64</sup> CPM, Article 25.



cal rights<sup>65</sup>; to assembly and association<sup>66</sup>; to legal personality<sup>67</sup>; and to access to justice.<sup>68</sup> The treaty also establishes the obligation to adopt specific measures to guarantee the rights of the elderly in cases of armed conflict, humanitarian emergencies, and disasters.<sup>69</sup>

75. These formulations have been included in the CPM in a manner similar to the stipulation of these rights in general international conventions, but specifying applications tailored to the vulnerability of the elderly. These parameters also apply to the Commission's interpretation of the rights of the elderly.
76. In addition, the CPM also provides for a series of special rights of the elderly such as the rights to independence and autonomy<sup>70</sup>, to community participation and integration<sup>71</sup>, to safety and to live a life free from violence<sup>72</sup>, to accessibility and personal mobility.<sup>73</sup> The recognition of these rights not only reflects the aforementioned paradigm shift with respect to the elderly, but also establishes concrete measures for their integration and the reappraisal of the role in society.
77. In line with the above, the Convention on Older Persons develops an impressive approach to social protection that effectively addresses the needs of the elderly. The Commission finds that, from the point of view of developments in the course of people's lives -- an approach recognized in the CPM --, some social benefits are used more intensively by different segments of the population at different stages of human development. Thus, for example, during childhood, adolescence, and youth, some care facilities, access to education, vocational training, among other benefits, are used by these segments of the population, either as a priority or, in many cases, exclusively. The same applies to some job protection facilities for people who have dependents. Standardizing the approach based on developments in the course of people's lives makes it possible to de-stigmatize changes in human beings' needs and in the corresponding attention that States must pay to them, without considering them as excessive administrative or economic burdens.

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<sup>65</sup> CPM, Article 27.

<sup>66</sup> CPM, Article 28.

<sup>67</sup> CPM, Article 30.

<sup>68</sup> CPM, Article 31.

<sup>69</sup> CPM, Article 29.

<sup>70</sup> CPM, Article 7.

<sup>71</sup> CPM, Article 8.

<sup>72</sup> CPM, Article 9.

<sup>73</sup> CPM Article 26.

78. Based on the foregoing, the Commission recognizes that old age requires the activation of social protection mechanisms related to the rights and guarantees associated with the care that older people require by virtue of their right to health.<sup>74</sup> Along these lines, the CPM establishes safeguards based on the provision of free and informed consent for health services. The Convention is explicit in stating that provision of consent is an inalienable right with respect to any health-related decision, treatment, intervention, or research. As a corollary, the information needed for the exercise of the right to consent must be provided in an accessible and understandable manner. The right to consent implies that an older person may revoke or refuse medical and surgical treatments, including palliative care. For the Commission, health care operators should seek consent as a general rule, and the impossibility of obtaining consent should be an exception that can only be applied in cases provided for by law and only “In life-threatening medical emergencies where it is not possible to obtain informed consent, exceptions established in accordance with domestic law may be applied”<sup>75</sup>
79. Consistent with the above, the CPM also provides that the elderly have the right to receive comprehensive long-term care services in health, social services coverage, food and nutritional security, water, clothing, and housing; thereby promoting the ability of the elderly to decide to remain at home and maintain their independence and autonomy.<sup>76</sup> In this regard, the treaty provides that States must design support measures for families and caregivers with the full participation of the elderly and respecting their opinion. The provision of long-term and palliative care services intersects with the right to consent, participation, freedom, and privacy of the elderly, which must be respected by caregivers and medical personnel, who shall be subject to administrative, civil, and criminal liability if they engage in practices detrimental to older persons.

### C. Follow-up mechanism

80. One of the aspects to be highlighted is the mechanism that the Convention on Older Persons has envisaged to follow up on the commitments acquired by the States Parties and to promote the effective implementation of the Convention at the national level. This mechanism, which will enter into force upon receipt of the tenth instrument of ratification or accession, will comprise a Conference of States Parties and a Committee of Experts.<sup>77</sup> Among other functions, the Conference of States Parties shall promote the exchange of best practices, experiences, and technical cooperation among States to ensure the implementation of the Convention. The Committee of Experts shall receive periodic reports from the States and submit recommendations for progressive compliance with the Convention.

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<sup>74</sup> CPM, Article 19.

<sup>75</sup> CPM, Article 11.

<sup>76</sup> CPM, Article 12.

<sup>77</sup> CPM, Articles 33 to 35.

The first of these reports will be made one year after the establishment of the Committee, and thereafter they will be prepared on a four-yearly basis.

81. This mechanism provides for the exchange of experiences, best practices, and dialogue to coordinate public policies at the regional level, as well as to develop a better understanding of the regulatory measures, policies or programs required in the States Parties to guarantee the rights of older persons at the national level. The mechanism also constitutes a tool for monitoring implementation of the Convention.
82. The IACHR considers that, with its mandate to examine progressive implementation of the rights protected in the Convention on Older Persons, the Committee of Experts can benefit from the lessons learned during the creation of the Special Working Group for the Analysis of National Reports under the Protocol of San Salvador, as well as from the procedures followed for the presentation of periodic reports.<sup>78</sup>
83. Given the importance of this follow-up mechanism to ensure that the instrument functions properly, the IACHR reiterates its call to the States to promptly accede to the Convention on Older Persons in order to activate the mechanism and thereby strengthen the regional system for the protection of the human rights of older persons. The Commission calls on the States to overcome any domestic obstacles that may exist to achieve access to the Convention on Older Persons and places itself at their disposal to provide the required technical support.

#### D. System of individual petitions, cooperation, and technical assistance to States

84. The Convention on Older Persons establishes the right of a person or group of persons, or a non-governmental entity legally recognized in one or more OAS member states, to submit petitions to the IACHR containing allegations or complaints of violation of any of the articles of this Convention by a State Party, thereby expanding the catalog of justiciable rights in the inter-American system and the consequent possibility of developing standards in this area.<sup>79</sup> Likewise, the Convention explicitly establishes that the petition system must take into account the progressive nature of the implementation of the economic, social, and cultural rights protected by the Convention, reinforcing the justiciability of these rights, in accordance with Article 26 of the ACHR.
85. Regarding the system of individual petitions and cases of the IAHRs, it should be noted that the Inter-American Commission has been processing petitions with some component related to the rights of older persons, even when they do not fall within the timeframe of the

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<sup>78</sup>OAS, [General Assembly Resolution AG/RES.2713 \(XLII-O/12\)](#). IACHR, "Perspective of the Inter-American Commission on Human Rights of the Organization of American States (OAS)" regarding the draft Inter-American Convention on the Human Rights of Older Persons, OAS.Ser.G CAJP/GT/DHPM-114/13, November 18, 2013, par. 35.

<sup>79</sup> [CPM, Article 36](#).

Convention on Older Persons. At the same time, the Rules of Procedure of the IACHR establish that the initial analysis of a petition is carried out chronologically, taking into consideration the order in which it is submitted, with certain exceptions that allow it to advance *per saltum* or out of chronological order and to prioritize certain issues, including those in which the passage of time may render the petition ineffective, such as when the alleged victim is an elderly person.<sup>80</sup> The Commission has been making this exception since its amendments to its Regulations entered into force in 2013. The IACHR emphasizes that the authorization to process complaints regarding obligations derived from other inter-American instruments has enabled it to have a positive impact going beyond the resolution of a specific case and has resulted in legislative reforms and the formulation of public policies tailored to the needs of sectors of society that have historically been discriminated against.<sup>81</sup>

86. In addition, the Convention on Older Persons establishes the IACHR's mandate to answer consultations and provide advice and technical cooperation to States that request it, in order to ensure effective implementation of the Convention on Older Persons.<sup>82</sup> This mandate is part of the technical advisory work that the IACHR performs for States through its Technical Cooperation Program on Institutional Structures and Public Policies with a Human Rights Approach.<sup>83</sup> In this regard, the Commission is at the disposal of OAS member states and civil society to provide technical assistance and cooperation in relation to the promotion and protection of the rights of older persons in the region.

## 2.2. Precedents, jurisprudence, and development of inter-American standards for the protection of older persons

87. The bodies of the IAHRs have directly and indirectly addressed the situation of the rights of the elderly and the particular obstacles to their exercise that this segment of the population experiences. Thus, even before the adoption and entry into force of the CPM, human rights standards had been developed that take age into consideration when it comes to protecting certain groups. That being so, the IACHR will describe the standards regarding the prohibition of discrimination on the grounds of old age, life with dignity, informed consent, and the right to health, pension and retirement rights, deprivation of liberty, and protection in humanitarian situations such as the COVID-19 pandemic.

### A. Recognition of the elderly as subjects of special protection and prohibition of discrimination against them

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<sup>80</sup> IACHR, Rules of Procedure of the IACHR, August 1, 2013, Article. 29, initial processing.

<sup>81</sup> IACHR, "Perspective of the Inter-American Commission on Human Rights of the Organization of American States (OAS)" regarding the draft Inter-American Convention on the Human Rights of Older Persons, OAS.Ser.G CAJP/GT/DHPM-114/13, November 18, 2013, par. 38.

<sup>82</sup> CPM, Article 36.

<sup>83</sup>IACHR [Strategic Plan 2017-2021](#).

88. The IAHRs has embraced prohibition of age-based discrimination and recognized the vulnerability of older persons. As the IACHR has already pointed out in this report, Article 1.1. of the general clause on protection against discrimination in the ACHR does not include the age criterion. However, in a case related to the right to health, the Inter-American Court noted that "(...) [the] right of access to health services without discrimination, even for categories that are not explicitly included in the norm, such as those related to the age of the elderly" is protected by the ACHR.<sup>84</sup>
89. Along these lines, the Court pointed out that "(...) the prohibition of discrimination related to age, in the case of older persons, is protected by the American Convention"<sup>85</sup> Therefore, the right to equality and non-discrimination encompasses both a ban on establishing arbitrary differences and the obligation to generate circumstances of real equality with respect to the elderly who, given their vulnerable situation, must be guaranteed access to medical health services on an equal basis<sup>86</sup> and easy access to public services.<sup>87</sup>
90. In accordance with the above, progress can also be seen in international standards for the protection of the rights of the elderly, in the form of greater understanding and recognition of the right to a dignified old age, and, therefore, better treatment of the elderly.<sup>88</sup> The Court also: "highlights in the region various agendas that give greater prominence to the older person in public policies through programs to raise awareness and enhance appreciation of the older person in society, the creation of national plans to address the issue of ageing, the promulgation of laws, and the facilitation of access to social security systems."<sup>89</sup>

## B. Conditions for a dignified life for the elderly

91. The I/A Court H.R. has also referred to access to conditions for a dignified life, including the elderly. In the case of *Yakye Axa v. Paraguay*, related to the international responsibility of the State for violation of the community's right to its ancestral lands, the Inter-American Court began to address the issue of the elderly and established the obligation to grant special treatment to this population group by guaranteeing the right to adequate food, access to clean water, and health care. Likewise, the judgment emphasized that in the *Yakye Axa*

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<sup>84</sup>I/A Court H.R., Case of *Poblete et al. v. Chile*, Judgment of March 08, 2018. Series C No. 349, par. 122.

<sup>85</sup>I/A Court H.R., Case of *Poblete et al. v. Chile*, Judgment of March 8, 2018. Series C No. 349, par. 122.

<sup>86</sup>I/A Court H.R., Case of *Poblete et al. v. Chile*, Judgment of March 8, 2018. Series C No. 349, par. 123.

<sup>87</sup>I/A Court H.R. Differentiated approaches to certain groups of persons deprived of their liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 343.

<sup>88</sup>I/A Court H.R., Case of *Poblete et al. v. Chile*, Judgment of March 8, 2018. Series C No. 349, par. 126.

<sup>89</sup>I/A Court H.R., Case of *Poblete et al. v. Chile*, Judgment of March 8, 2018. Series C No. 349, par. 127.

indigenous community, the oral transmission of culture to the new generations is mainly carried out by the elders.<sup>90</sup>

### C. Informed consent and the right to health of the elderly

92. The Case of Poblete Vilches et al. v. Chile was the first occasion on which the I/A Court H.R. specifically ruled on the health rights of the elderly. The I/A Court H.R. established in its judgment specific aspects such as: (a) the particular vulnerability on many occasions of older persons with respect to access to health care, highlighting the existence of factors such as physical limitations of mobility, economic status or the severity of the disease and possibilities of recovery, (b) situations where the vulnerability of older persons is increased due to the imbalance of power that exists in the doctor-patient relationship, making it essential to guarantee the patient, in a clear and accessible manner, the necessary information and understanding of their diagnosis or particular situation, as well as the measures or treatments to address such a situation.<sup>91</sup>
93. In these terms, the Court has highlighted the importance of drawing attention to the elderly as subjects of rights with special protection and therefore of comprehensive care, with respect for their autonomy and independence, as well as the reinforced obligation to respect and guarantee the right to health. This implies an obligation of the State in both the private and public spheres to guarantee the highest possible level of health, without discrimination, in an efficient and continuous manner.<sup>92</sup>
94. The I/A Court H.R. notes "as an inescapable fact that the population is aging constantly and considerably" in the region, a challenge that must be addressed through the involvement of States in a comprehensive response that recognizes the elderly as subjects of special rights, including the prevention and promotion of their health,<sup>93</sup> as well as care for chronic and terminal illnesses, so that avoidable suffering can be avoided.<sup>94</sup>

### D. Pension and retirement rights

95. Although pension matters include a series of rights that transcend age itself, it is also a fact of reality that these types of benefits are obtained at advanced ages in the course of life,

<sup>90</sup>I/A Court H.R. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. of 125, par. 175.

<sup>91</sup>I/A Court H.R. Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, paras. 131 and 162.

<sup>92</sup>I/A Court H.R. Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, par. 127.

<sup>93</sup>I/A Court H.R., Case of Poblete et al. v. Chile, Judgment of March 8, 2018. Series C No. 349, par. 130.

<sup>94</sup>I/A Court H.R., Case of Poblete et al. v. Chile, Judgment of March 8, 2018. Series C No. 349, par. 130. I/A Court H.R., Case Yakye Axa Indigenous Community v. Paraguay, Series C No. 125, par. 175. CESCR. General Comment No. 14, The right to the highest attainable standard of health, par. 35.

as is the case of the elderly. Accordingly, the inter-American system protects the right to a pension and the implications of accessing a retirement pension in a quick and simple way to avoid impairing the right to integrity.

96. Regarding pension protection, in the case of *Five Pensioners v. Peru*, the Inter-American Court established that a retirement pension is a right protected by Article 21 of the American Convention, which protects the right to property. This means that pensions are protected against arbitrary or illegal reductions. In this sense, any pension restriction must conform to the conventional provisions governing restrictions on property rights. In the words of the Court, “States may restrict the enjoyment of the right to property for reasons of public utility or social interest. In the case of the patrimonial effects of pensions (the pension amount), States may reduce these only by the appropriate legal procedure and for the said reasons.”<sup>95</sup> That same restriction must be in line with Article 5 of the Protocol of San Salvador, according to which states are only allowed to establish restrictions and limitations on the enjoyment and exercise of economic, social and cultural rights “by means of laws promulgated in order to preserve the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.”<sup>96</sup>
97. Likewise, in the Case of *Acevedo Buendía v. Peru*, the Court also pointed out that it is a natural aspiration of unemployed or retired workers to enjoy the freedom and rest that comes with the completion of their work time. In this regard, the Commission notes that, although the standard is not aimed solely at the elderly, it is natural that access to a contributory pension is a normal process with the passage of time and age. In this sense, it is important that the Court has understood that the cancellation or obstruction of the enjoyment of severance and retirement payments is a violation of the right to a pension, given that it results in the affected persons being forced to obtain new jobs, to compromise their patrimony and person through loans or the sale of their assets, or to adapt to a new socioeconomic reality precisely at the stage of their lives when they could do without a job and when the acquired right to a pension would guarantee certain economic peace of mind.<sup>97</sup>

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<sup>95</sup>I/A Court H.R. Case of the “Five Pensioners” v. Peru. Merits, Reparations, and Costs, Judgment of February 28, 2003. Series C No. 98, par. 116.

<sup>96</sup>I/A Court H.R. Case of the “Five Pensioners” v. Peru. Merits, Reparations, and Costs, Judgment of February 28, 2003. Series C No. 98, par. 116: “While the right to a level pension is an acquired right, in accordance with Article 21 of the Convention, States may place limitations on the enjoyment of the right to property for reasons of public utility or social interest. In the case of the patrimonial effects of pensions (the pension amount), States may reduce these only by the appropriate legal procedure and for the said reasons. For its part, Article 5 of the Additional Protocol to the American Convention on Economic, Social and Cultural Rights (hereinafter “the Protocol of San Salvador”) only allows states to establish restrictions and limitations on the enjoyment and exercise of economic, social and cultural rights “by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.” In any and all circumstances, if the restriction or limitation affects the right to property, it must also be carried out in accordance with the parameters established in Article 21 of the American Convention.”

<sup>97</sup>I/A Court H.R. Case of *Acevedo Buendía et al.* (“Discharged and Retired Employees of the Office of the Comptroller”) v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2009. Series C No. 198, par. 131.

## E. “Reasonable period of time” in relation to the situation of older persons

98. International law standards for determining what constitutes reasonable time for a judicial proceeding historically considered the complexity of the matter at hand and the procedural behavior of the parties. However, in the case of *Valle Jaramillo v. Colombia*, the Court added a fourth analytical factor that has a highly protective effect with respect to the elderly.<sup>98</sup> In its analysis, the Court indicated that the determination of the legal situation of the individual and the right intended to be vindicated was relevant for the analysis of the reasonable time period. Thus, the Court considered it “(...) pertinent in the analysis of reasonableness [of time] to take into account the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it; bearing in mind, among other elements, the matter in dispute. if the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible.”<sup>99</sup>
99. In light of the above, the Commission considers that, insofar as the passage of time has a direct impact on his or her legal situation, a process of determining a right for an elderly person will always be decisive in the analysis of a reasonable period of time.

## F. Deprivation of liberty of older persons

100. In the exercise of its advisory competence, the I/A Court H.R. ruled on the situation of older persons who are deprived of their liberty. The Court argued that "special needs of older persons due to the ageing process are heightened by the conditions of vulnerability of the prison population. The Court underscores that, in the case of this group, there exists an intersectional joining of the factors of discrimination, such as sex, gender, sexual orientation, ethnic origin and migratory condition, that increases the vulnerability associated with the life cycle and the deprivation of liberty."<sup>100</sup>
101. Accordingly, the Court has pointed out that the States must produce information and studies that allow them to make evidence-based decisions regarding this segment of the population,<sup>101</sup> given that, precisely, prison services were not "conceived with the characteristics

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<sup>98</sup>I/A Court H.R. Case of *Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 155.

<sup>99</sup>I/A Court H.R. Case of *Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, par. 155.

<sup>100</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 344.

<sup>101</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 345.



and needs of older persons in mind.”<sup>102</sup> Taking into consideration the ageism shaping prison policies, the Court indicated, *inter alia*, that States should consider the appropriateness of substitute or alternative measures to the execution of custodial sentences for older persons,<sup>103</sup> and safeguard their rights to accessibility and mobility through accommodation in safe and easily accessible spaces<sup>104</sup>, to health in such a way that their situation is not exacerbated, that their active aging is guaranteed, and that they have access to health services of a level equivalent to that guaranteed outside prison.<sup>105</sup>

102. The Court also emphasized the need for older persons to be housed in prisons close to their homes, in order to encourage visits, communication, and contact with their families, guaranteeing facilities for visits<sup>106</sup> and seeking their reinsertion and social reintegration through programs that must be adapted to the needs and abilities of older persons. This also requires the incorporation of a gender perspective that addresses the particular needs and circumstances of older women, with emphasis on those who have been deprived of their liberty for long periods of time.<sup>107</sup>
103. The Commission considers that, although the standards set by the Court refer to deprivation of liberty in penitentiary institutions, they are applicable, in pertinent aspects, to other forms of deprivation of liberty. Along these lines, the United Nations Independent Expert on the enjoyment of all human rights by older persons, in her report on older persons deprived of their liberty, also included as forms of deprivation the detention of immigrants and certain contexts in which care is provided in health institutions and private homes.<sup>108</sup>

## G. Protection in Humanitarian Emergency Situations: The COVID-19 Pandemic and Older Persons

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<sup>102</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 346.

<sup>103</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 347ff.

<sup>104</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 351ff.

<sup>105</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 362ff.

<sup>106</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 379ff.

<sup>107</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 386ff.

<sup>108</sup> Human Rights Council, "Older persons deprived of their liberty. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler", 51st session, 12 September-7 October 2022, Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development, A/HRC/51/27, 9 August 2022, paras. 18-23.

104. For its part, the Inter-American Commission ruled on the rights of the elderly in the context of the health emergency caused by the COVID-19 pandemic. The COVID-19 pandemic spread in the region from the beginning of 2020 and disproportionately affected older persons in a wide range of aspects, such as the high prevalence of mortality compared to other age groups, situations of age discrimination as regards access to respirators in health centers, isolation exacerbated in particular by the digital divide and lack of familiarity with information and communication technologies (ICTs), inability to access essential care services, and total loss of income due to not being able to go out to work because of health restrictions, among many other aspects.
105. In its Resolution No.1/2020,<sup>109</sup> the IACHR addressed the main issues of concern regarding the pandemic and the elderly, recalling that when issuing emergency and containment measures in response to the COVID-19 pandemic, the States of the region must provide and apply intersectional perspectives and pay special attention to the needs and the differentiated impact of such measures on the human rights of groups historically excluded or at special risk, such as the elderly, among others. Specifically, the IACHR recommended that States:
40. "Prioritize including older persons in programs to address the pandemic, particularly access to COVID-19 testing, timely treatment, access to medication and necessary palliative care, ensuring that they give prior informed and free consent, and bearing in mind particular situations such as membership of indigenous peoples or people of African descent.
  41. Take the measures needed to prevent contagion of COVID-19 among older people in general and particularly among those in long-stay homes, hospitals and prisons, and provide humanitarian aid to ensure that they have food, water and sanitation; also set up areas to receive people living in extreme poverty, street people and the disabled.
  42. Reinforce in this context measures to monitor violence against older people, whether it be within the family, in long-stay care homes, hospitals or prisons, and provide access to complaint mechanisms.
  43. Ensure that medical protocols and decisions about medical resources and treatment related to COVID-19 are implemented without discrimination due to age, paying particular attention to older people who are disabled or have chronic conditions or disorders, patients with HIV or AIDS and those who require regular medication and care, such as, *inter alia*, patients with diabetes, hypertension, senile dementia, and Alzheimer's disease.

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<sup>109</sup> IACHR, [Resolution No.1/20, Pandemic and Human Rights in the Americas](#), adopted by the IACHR on April 10, 2020

44. When implementing contingency measures, consider the necessary balance between protection against COVID-19 and the particular need for older people to connect with their families, particularly those who are alone or are in long-term residencies, and offer alternative means of connecting them with their families such as phone or Internet communications, bearing in mind the need to close the digital divide."
106. Subsequently, in Resolution No. 4/2020<sup>110</sup>, the IACHR adopted the "Inter-American Guidelines for the Protection of the Human Rights of Persons with COVID-19," in which it establishes the protection of the right to equality and non-discrimination of persons with COVID-19 in decisions related to health and care, which must be adopted and implemented without any type of arbitrary discrimination, considering in particular certain groups such as the elderly or persons with disabilities.
107. The different vaccines available against COVID-19 have proved to be effective in substantially reducing hospitalization and mortality. Through Resolution No. 1/2021<sup>111</sup> "Covid-19 vaccines and inter-American human rights obligations," the IACHR provided recommendations based on the principles of equality and non-discrimination, human dignity, informed consent, transparency, access to information, cooperation, and international solidarity in order to help States fully embrace their international obligations in the context of decisions on vaccination, especially guaranteeing the right to health and life.
108. To this end, among the recommendations made to States, special emphasis was attached in the immunization process to the urgent need for States to address the particular needs of certain populations due to discrimination on a number of grounds, such as age, and in particular with respect to older persons. The recommendations identified the elderly, among other vulnerable groups, in the criteria regarding the distribution and prioritization of vaccine doses for those at higher risk of infection and those at greater risk due to the pandemic. For the prioritization of doses, they also took into account the special vulnerability of older persons in detention and those residing in shelters and care facilities.
109. Likewise, in Press Release 149/21,<sup>112</sup> the IACHR and its Rapporteurship on Economic, Social, Cultural, and Environmental Rights (OSRESCER) reminded the States of the importance of prioritizing older persons in the vaccination process against COVID-19, and warned about the serious consequences of ageism on the health, well-being, and enjoyment of human rights of the elderly.

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<sup>110</sup> IACHR, [Resolution No.4/20, Human Rights of Persons with COVID-19](#), adopted by the IACHR on July 27, 2020.

<sup>111</sup> IACHR, [Resolution No.1/2021, Covid-19 vaccines and inter-American human rights obligations](#), adopted by the IACHR on April 6, 2021.

<sup>112</sup> IACHR, Press Release 149/21, "[On the occasion of "World Elder Abuse Awareness Day," the IACHR y its OSRESCER note the importance of prioritizing older people for COVID-19 Vaccinations.](#)," June 15, 2021.



## **Chapter 3**

National systems for  
protecting the rights of the  
elderly in the Americas

## NATIONAL SYSTEMS FOR PROTECTING THE RIGHTS OF THE ELDERLY IN THE AMERICAS

110. In this section, the Inter-American Commission refers to the State's duty to have national systems for the protection of the elderly within the framework of the IAHRS. In so doing, the IACHR takes into consideration the provisions contained in conventions and other instruments regulating human rights, with respect to the right to social security and life with dignity. Based on that information, the Commission formulates an international standard that entails the obligation to design protection systems that establish public policies that progressively, but comprehensively, address the situation of vulnerable populations. At the end of this section, the IACHR describes the factors that need to be covered, at a minimum, by systems for the protection of the elderly.
111. The Commission will then refer to the main characteristics of national protection systems and programs to address the human rights needs of older persons. To this end, it will analyze the existence of institutions and authorities responsible for the rights of the elderly, as well as information gathering systems for the adoption of evidence-based public policies.

### 3.1. The state's duty to have national systems for the protection of the elderly in the inter-American system

112. The Commission has recognized that, given the exclusion endured by some particularly vulnerable groups, the mere legal recognition of their rights is insufficient. Thus, the IACHR has pointed out that effective protection of vulnerable populations requires a set of elements, in addition to laws, that constitute an entire system through which States guarantee human rights. These elements have been highlighted by the Commission and include, for example, public policies, programs, and services; institutional coordination mechanisms for the planning, design, approval, implementation, monitoring, and evaluation of public policies at different territorial levels (institutional framework); dissemination and awareness systems; data collection and information analysis systems; systems and surveillance; human and financial resources; and protocols and standards governing actions and the provision of services.<sup>113</sup>
113. The Commission has pointed out that the protection of vulnerable groups requires proper operational arrangements, a budget, and operations specifically designed to transform the circumstances they seek to regulate. For example, in the case of children and adolescents, in addition to recognizing their rights, they generally include sections dedicated to the assignment of competencies and responsibilities among the authorities, and to the creation and operation of the

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<sup>113</sup>IACHR *Towards the Effective Fulfillment of Children's Rights: National Protection Systems*, OEA/Ser.L/V/II.166 Doc. 206/17, November 30, 2017, par. 8.

institutional framework and the structures and mechanisms needed for application of the Code or the Law.<sup>114</sup> In the case of national systems for the protection of human rights defenders, the IACHR has emphasized that the public policies that support them should take into account the promotion of a culture that values the protection and promotion of human rights; the monitoring of patterns of violence through data collection; the improvement of investigation protocols; the allocation of sufficient financial and human resources; as well as the development of inter-agency coordination and cooperation for the implementation of the program.<sup>115</sup>

114. Likewise, in pronouncing on the relationship between poverty and human rights, the Commission has recognized the obligation of States to pay special heed to social sectors and persons who have historically suffered forms of exclusion or are victims of persistent prejudice, and to immediately adopt the necessary measures to prevent, reduce, and eliminate the conditions and attitudes that generate or perpetuate discrimination in practice.<sup>116</sup> In addition to the above, the Commission has also highlighted the important incorporation of systems of human rights indicators as methodological tools that seek to provide information not only on the compliance of States with their international obligations, but also to provide results on the impact of the measures adopted on the realization of rights.<sup>117</sup>
115. On the other hand, the Convention on Older Persons establishes the duty of the States Parties to promote the creation of public institutions specializing in the protection and promotion of the rights of older persons and their integral development.<sup>118</sup> Likewise, the CPM establishes that States Parties "Encourage the broadest participation by civil society and other social actors, especially older persons, in the drafting, implementation, and oversight of public policies and laws" for the fulfillment of the rights of older persons enshrined in the CPM.<sup>119</sup> In the same vein, it states that States Parties shall also "[p]romote the gathering of adequate information, including statistical and research data, with which to design and enforce policies to implement this Convention.
116. The IACHR recalls that these established obligations not only derived from a convention but are the corollary of developments and commitments made by the States over several decades regarding the situation of the rights of older persons. Thus, for example, the Regional Implementation Strategy for Latin America and the Caribbean of the Madrid International

<sup>114</sup>IACHR [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), OEA/Ser.L/V/II.166 Doc. 206/17, November 30, 2017, par. 9.

<sup>115</sup> IACHR, Hearings, 157th session, National protection systems for defenders and justice operators in the Americas, April 8, 2016.

<sup>116</sup>IACHR, Report on Poverty and Human Rights in the Americas, , OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017, par. 302

<sup>117</sup> IACHR, [Public Policy with a Human Rights Approach](#)OEA/Ser.L/V/II. Doc. 191, September 15, 2018 , par. 104.

<sup>118</sup> CPM, Article 4, f).

<sup>119</sup> CPM, Article 4, g).

Plan of Action on Ageing (MIPAA) established the promotion of the human rights of older persons as its first objective. To that end, the Strategy recommends explicitly incorporating the rights of the elderly into policies, laws, and regulations; drafting and proposing specific legislation that defines and protects these rights in accordance with international standards; and creating monitoring mechanisms through the corresponding national mechanisms.<sup>120</sup>

117. Accordingly, the Commission notes that there has long been concern for the generation of viable systems to protect the populations of the Americas. The American Declaration of the Rights and Duties of Man (ADRDM) itself establishes in Article XVI that all persons have the right to social security that protects them against consequences - beyond their control - that make it impossible for them to earn a living. Social security is independent and cannot be construed only as recognition of the right to work, health, or education; its scope is broader and requires the deployment of strategies and the articulation of various institutions to guarantee protection systems adjusted to complex realities that often require permanent attention. Likewise, for the States Parties to the ACHR, these obligations are also reflected in Article 26 of that instrument, which enshrines economic, social, and cultural rights.
118. The OAS Charter itself introduced the concept of "integral development" with the 1985 Cartagena de Indias Protocol. With these modifications, Chapter VII of the Charter added a complete section establishing the content and objectives of integral development in the Americas. Based on these changes, Article 33 establishes that "development is a primary responsibility of each country and should constitute an integral and continuous process for the establishment of a more just economic and social order that will make possible and contribute to the fulfillment of the individual." Likewise, Article 45 determines that States, in order to achieve a just social order, agree to devote their best efforts to the application of principles and mechanisms that include "the development of an efficient social security policy."<sup>121</sup> For the Commission, these provisions should be read in line with Article 28 of the Universal Declaration of Human Rights, which provides that "everyone is entitled to a social and international order in which the rights and freedoms (...) can be fully realized."
119. The IACHR also finds that the means of subsistence have been associated in the Inter-American system with the notion of a dignified life. This concept, as has already been pointed out in this report, refers to the material access that States must guarantee, for example, to clean water, food, or health. According to the I/A Court H.R., the State, in its position as guarantor, in order to protect and guarantee the right to life, must generate "minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the State has the duty to take positive, concrete measures

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<sup>120</sup> United Nations, ECLAC, [Regional Implementation Strategy for Latin America and the Caribbean of the Madrid International Plan of Action on Ageing](#). Regional Intergovernmental Conference on Ageing, Santiago, Chile, 2003.

<sup>121</sup>OAS Charter, Article 45.

geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority."<sup>122</sup>

120. In light of the above, the IACHR considers that the establishment of national protection systems responds to an obligation under international law to guarantee integral development and a social order that give effect to the rights and freedoms of individuals. These systems must guarantee the dignified life of populations that, for reasons beyond their control, find themselves in or reach a situation of historical discrimination that prevents or restricts their possibilities of subsistence, as is the case of the elderly. Based on the above, States have the obligation to design protection systems that determine public policies that address progressively, but comprehensively, the situation of populations that may be at risk of facing human rights violations or that live in a situation of extreme precariousness that prevents the development of all their potential at a particular stage in the life of the individuals or group concerned.

121. Therefore, operationally, the Commission defines a national system for the protection of the human rights of the elderly as the set of laws, policies, and institutions of a country that promote, protect, and guarantee the fulfillment of the rights of older persons. Likewise, without prejudice to the fact that the States organize their operational function according to their sovereignly chosen institutional design, there are certain components that usually stand out as parts of what is known in the countries of this region as the "national protection systems" (hereinafter "systems," "national systems" or "NPS")<sup>123</sup>, the Commission considers that the NPS should meet at least the following requirements:

- Determination of a responsible, identifiable authority with governing capacity in charge of coordinating institutions, plans and programs from different sectors, as well as with other state powers, for the protection and exercise of the rights of the elderly.
- Consolidation of regulatory catalogs -codes, single ordered texts, general laws, among others- that make it possible to easily identify norms related to the protection of the elderly.
- Adoption or modification of general plans and programs to identify and prioritize urgent actions to provide social coverage for the dignified life and survival of the elderly until their death.

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<sup>122</sup>I/A Court H.R. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs, Judgment of June 17, 2005. Series C No. 125, par. 162.

<sup>123</sup>CIDH Toward a Comprehensive Policy for the Protection of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, paragraph, 207; Towards the Effective Fulfillment of Children's Rights: National Protection Systems, OEA/Ser.L/V/II.166 Doc. 206/17, November 30, 2017, par. 8.



- Generation of programs to foster a culture that values the protection and promotion of the human rights of the elderly, promotes intergenerational solidarity, eradicates ageism, and promotes autonomous, active, and productive aging.
- Generation of protocols for the review of processes and plans in State institutions that provide services for the realization of the rights of the elderly.
- Creation or modification of reporting systems in health and palliative care facilities that include protocols for providing care in situations in which the rights of the elderly might be violated.
- Generation of information and statistics that allow the adoption of evidence-based public policies free from any bias based on age.
- Allocation of sufficient financial and human resources.

### 3.2. National Systems for Protecting the Human Rights of Older Persons

122. In this section, the Commission provides an overview of the region with respect to developments in the institutional framework for the elderly created at the state level, focusing its analysis on the most recent trends regarding their structure, objectives, and functions in light of the new paradigm of active aging and comprehensive protection of rights, as well as presenting some examples of institutional bodies in which older people participate.<sup>124</sup> Examples of the type of actions they undertake can also be found through the links in Table 1 in the annexes to this report.

123. Accordingly, the following section is divided into two parts. The first presents what the IACHR calls "the institutional framework" created around the protection of the rights of older persons. In the second part, the Commission reports on the systems for data collection and analysis of information on older persons in the region. For that report, the IACHR took into account the responses to the questionnaire, supplemented with information obtained from monitoring performed by the IACHR.

#### A. The institutional framework for protecting the human rights of older persons

124. The Commission notes that the States of the Americas have institutions dedicated to the promotion and protection of the rights of older persons that seek to develop inter-agency coordina-

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<sup>124</sup> For an analytical methodology and examples of public institutions related to the elderly see: S. Huenchuan (Editor), [Envejecimiento e institucionalidad pública en América Latina y el Caribe: conceptos, metodologías y casos prácticos \(Aging and public institutions in Latin America and the Caribbean: concepts, methodologies and case studies\)](#), Economic Commission for Latin America and the Caribbean (ECLAC), 2016.

tion mechanisms or bodies for this purpose. These institutions deal with a wide variety of topics and issues, while also providing opportunities or facilities for the participation of the elderly, either through organizations or as individuals; an approach that reflects to some extent recognition of the right of the elderly to participate and influence the issues that affect them.

125. The IACHR notes that, for decades, issues related to the elderly were viewed by society in a partial, separated way, as having to do with retirement and pensions, internment and isolation in asylum institutions, provision of health services focused on diseases, neglect, and disability. This type of care involves a vision based on disability, of a dependent person subject to rights benefiting from programs that are mostly welfare-based.
126. The inclusion in national contexts of the new paradigm of old age and active aging that regards the elderly as subjects of rights, promoted since the 1980s by various international human rights instruments and described in this report, has led to a change in the vision, objectives, and functions of the institutional framework for the elderly. Accordingly, care for these populations is entrusted to more complex (governmental and non-governmental) inter-agency bodies and arrangements, with a focus on the comprehensive protection of the human rights of the elderly, which encompasses a broad spectrum of rights to be protected and enforced by the States.
127. There are several examples illustrating the incorporation of the new paradigm in the actions of these institutions, for instance, in the case of elderly victims of abuse and domestic violence. Initially, these types of violations were mostly viewed as issues that only affected women and children. However, the IACHR notes that the institutions have incorporated or bolstered public awareness campaigns to draw attention to older persons, in addition to developing various specific services for reporting and providing support and protection in cases of violence and mistreatment involving older persons. Other recently incorporated items are long-term (operationally complex) care services, intergenerational participation activities, educational courses for the elderly in the use of digital tools, and others.
128. As shown in Table 1, in the cases of Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Costa Rica, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Saint Lucia, Trinidad and Tobago, the United States, Uruguay, there are national entities performing institutional roles that are the main technical and regulatory authority on issues related to the elderly. In other cases, such as Antigua and Barbuda, Bahamas, Grenada, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, and Venezuela, the executive entity in charge of social development, human development, or social transformation is directly responsible for addressing the situation of older persons. One of the main characteristics of the governing bodies is that their functions include the formulation, advice, and monitoring of public policies with respect to the elderly, as opposed to other lower-ranking and less powerful institu-

tions, whose functions are restricted to executing programs and projects already defined in national policies.

129. In another institutional sphere, the Commission highlights the work undertaken by the Ombudsman's Offices in the States, as in Bolivia, Costa Rica, and Peru, including their work to promote and defend the human rights of the elderly. Several of them have units specializing in older people's affairs, helping to disseminate the application of protection standards, and highlighting human rights violations against the elderly, such as violence and mistreatment.
130. In relation to the participation of older persons in institutional bodies, one of the pioneering experiences in the region is the National Council in Brazil on the Rights of the Elderly (CNDPM) as well as the State and Municipal Councils, created by Federal Law [No. 8842 of January 4, 1994](#), which establishes national policy towards older persons. Article 6 of this law establishes that the national, state, Federal District, and municipal councils for the elderly shall be permanent, joint, and deliberative bodies, made up of an equal number of representatives of public agencies and entities and organizations representing civil society involved in this field.
131. The creation and purpose of these Councils has been to provide for social oversight, where society and government authorities exchange ideas, draw up proposals, and monitor the implementation of public policies, based on a participatory approach developed since the Federal Constitution of 1988. In some State Councils, the composition of their members takes gender considerations into account, as in the case of the State of Rio Grande do Sul, which stipulates a minimum of 30% and a maximum of 70% for each gender, or the State of São Paulo, where 70% of the members must be senior citizens. In all State and Municipal Council cases, the corresponding norms are applied autonomously, leading to variations in the interpretation and application of the national policy on the elderly.
132. For its part, Argentina, in which the State is also organized along federal lines, has a Federal Council for the Elderly created in 1997 (effective in 2003) that oversees and coordinates implementation of all policies targeting older people. The Federal Council has an Executive Committee with an equal number of government officials and representatives of the elderly, and a larger Plenary with a majority of representatives of the elderly. The decisions made by the Federal Council are not binding and, as in the case of Brazil, there are Provincial and Municipal Councils in each Province with their own regulations that act independently.
133. There are other cases where consultative councils with the participation of representatives of the elderly are incorporated into the structures of the institutions that deal with matters relating to the elderly, as in the case of Chile (SENAMA Consultative Committee and Regional Advisory Councils of Older Adults), El Salvador (National Board of Older Adults of CONAIPAM) and Uruguay (Consultative Council of InMayores) although their decisions are not binding. In other

cases, there is direct participation with voice and vote of representatives of the elderly in the governing bodies of the institutions, as in Panama and the Dominican Republic.

134. In short, there is no doubt that there is an increasing presence of institutional bodies in which the elderly participate in various ways and in which their right to participate is therefore recognized, thereby increasing their chances of deciding or influencing matters that affect them. Nevertheless, the Commission highlights the dearth of information, management reports, indicators, research, and methodologies to evaluate the real impact of these institutions, the role that older people play through their participation in different areas, and the effectiveness of consultative bodies in the formulation and implementation of public policies designed to enhance guarantees for the realization of the rights of older people.<sup>125</sup>

## B. Data gathering and analysis of information related to older persons

135. The whole set of regulations, policies, and programs that States pursue to ensure effective realization of the rights of the elderly involve a broad spectrum of actions at different operational levels (strategic, programmatic, activities, specific tasks), as well as a variety of issues or topics such as health, pensions, and retirement, access to justice, violence, and abuse, institutionalization, participation, and work, among others.
136. A prerequisite for undertaking this set of actions and enforce the rights of the elderly is to have systems and tools to gather information, as well as a set of indicators that provide systematic, continuous, and reliable information to conduct diagnostic assessments, prepare plans and programs, and monitor and evaluate their execution.<sup>126</sup> The IACHR has pointed out that an essential factor for guaranteeing adequate transparency and accountability processes is the State's capacity to produce information, as well as guarantee its dissemination and access to it by society.<sup>127</sup>
137. Thus, there are several data gathering tools for collecting information on the various problems and phenomena related to the situation of older persons. First, there are population censuses, which are generally conducted every ten years and contain information on demographic, housing, and social data. Second, household surveys, which are more frequent (quarterly, semi-annual, annual) and cover more specific aspects of households, such as income or characteristics of certain population groups such as the elderly, people with dis-

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<sup>125</sup> One of the few experiences of evaluation of consultative bodies with the participation of the elderly can be consulted at: Frente Nacional de Fortalecimento dos Conselhos de Direitos da Pessoa Idosa, [I Diagnóstico Nacional dos Conselhos de Direitos da Pessoa Idosa](#), Coordenação: Karla Giacomini, Marcela Giovanna Nascimento de Souza, Belo Horizonte: FFC, 2020.

<sup>126</sup> IACHR, [Public Policy with a Human Rights Approach](#)OEA/Ser.L/V/II. Doc. 191, September 15, 2018, par. 104. VII, para. "Human Rights Indicators. A Guide to Measurement and Implementation," Office of the United Nations High Commissioner for Human Rights (OHCHR), 2012.

<sup>127</sup> IACHR, [Public Policy with a Human Rights Approach](#)OEA/Ser.L/V/II. Doc. 191, September 15, 2018, par.

abilities, and children. Thirdly, there are the data records collected by different agencies in the course of their work, for different purposes, for example, statistics on the number of people served in a given feeding program.<sup>128</sup>

138. The Commission observes at the regional level a great dispersion of topics with partial approaches in the information related to older persons that the States prepare, as well as a great imbalance between the information generated of a demographic nature (composition and projections of the population over 60 years of age), certain aspects relating to health and pensions (older persons with health and social security coverage), and other types of information regarding the protection of the rights of older persons, such as that related to violence and abuse, access to justice, participation, and other matters. The IACHR notes that WHO/PAHO have warned of the problems of ageism in the context of data collection and the carrying out of studies of people in older age groups.<sup>129</sup> In this regard, older people tend to be excluded from health research despite having a disproportionately high share of the total disease burden and use of prescribed medications and treatments.<sup>130</sup>
139. According to the information received, existing statistics in many countries do not include the elderly because of age cutoffs, for example at 45 years of age, which makes it impossible to determine the needs of this segment of the population. In this regard, the Independent Expert on the enjoyment of all human rights by older persons noted that there is a serious gap "in the data available to capture the lived realities of older persons and the enjoyment of their human rights. This lack of significant data and information on older persons is, in itself, an alarming sign of exclusion and renders meaningful policymaking and normative action practically impossible."<sup>131</sup> She also presented a series of considerations to be taken into account when obtaining statistics related to older persons.
140. Some States have engaged in valuable initiatives to provide a holistic view of the situation of the elderly. In the case of Costa Rica, this has included the preparation of Reports on the Status of Older Adults, which cover a wide variety of aspects, including the analysis of specific population groups of older persons, such as Afro-descendants, indigenous people, and migrants.<sup>132</sup> The IACHR also notes the Information System on Old Age and Aging (SIVE) within the framework of the Social Observatory of Programs and Indicators of the

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<sup>128</sup>Cf. IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights, OEA/Ser.L/V/II.132 DOC 14 rev. 1, July 19, 2008, See also: Quarterly reports on the [situation of the older adult population](#), Instituto de Estadística e Informática de Perú (INEI).

<sup>129</sup> WHO/PAHO, Global Report on Ageism, 2021, p. 24.

<sup>130</sup> WHO/PAHO, Global Report on Ageism, 2021, p. 25.

<sup>131</sup> Human Rights Council. [Human rights of older persons : the data gap Report of the Independent Expert on the enjoyment of all human rights by older persons](#), July 9, 2020.

<sup>132</sup> Consejo Nacional de la Persona Adulta Mayor (CONAPAM) and Universidad de Costa Rica (UCR), [II Informe Estado de Situación de la Persona Adulta Mayor en Costa Rica](#), 2020.

Ministry of Social Development of Uruguay, which aims to produce information on old age and aging that draws attention to living conditions from life cycle, gender, and rights perspectives; to systematize the information available on older persons and make it available to society on an ongoing basis in an accessible and timely manner; to contribute relevant information for the design and implementation of policies, plans, programs, and regulations that advance the well-being of older people; to contribute to the institutional strengthening of the National Institute of Older Persons as the lead agency on old age and aging; and to contribute to the monitoring of the Second National Plan on Aging and Old Age (PNEV).<sup>133</sup>

141. The Commission stresses the importance of States, academia, and civil society jointly preparing status reports, information systems, observatories, or other instruments that provide a holistic view of the situation of older persons, as well as drawing attention to the level of enjoyment of their human rights and persistent challenges. In addition to the contribution of data from each organization involved, which enriches the analysis, these institutions allow for the exchange of ideas and perspectives on the issues being handled, which leads to the generation of new demands for information in a manner consistent with international obligations regarding national protection systems. These efforts are also essential for the development of work methodologies with indicators that cover different levels and topics, and that allow for evidence-based monitoring and evaluation of the situation of older people, thus contributing to greater transparency and legitimacy of the findings.

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<sup>133</sup> It has a web portal (<http://sive.mides.gub.uy>) posting the indicators by thematic axis, as well as associated documents and information on social programs and projects.



## **Chapter 4**

Rights of older persons recognized  
in the convention and overview of  
national systems protecting the  
rights of older persons in the region

## RIGHTS OF OLDER PERSONS RECOGNIZED IN THE CONVENTION AND OVERVIEW OF NATIONAL SYSTEMS PROTECTING THE RIGHTS OF OLDER PERSONS IN THE REGION

142. Below, the Commission describes the main developments in equality and non-discrimination of the elderly with an intersectional perspective. In this regard, the Commission reiterates that age is one ground on which people experience discrimination and, consequently, States have the obligation to eradicate it. Next, the IACHR analyzes intersectionality in the impact on equality and non-discrimination with respect to other vulnerable groups. Finally, the Commission analyzes the protections afforded by States to address the phenomenon of ageism.

### 4.1. Equality and non-discrimination on the basis of age

143. In this section, the IACHR will refer to the international standards of the IAHRs for the protection of equality and non-discrimination of the elderly as protected subjects who have traditionally suffered from a lack of protection. Likewise, from an intersectional perspective, the IACHR will present information regarding the rights of older persons whose lives include other factors or circumstances that exacerbate their situation of discrimination, such as being women or LGBTIQ persons, or being deprived of liberty or in a situation of human mobility (migrants, for example). Finally, based on the information it has received, the IACHR will report on the plans and programs that have been adopted by the States to eradicate age discrimination.

#### A. International standards regarding the right to equality, prohibition of discrimination based on age, and intersectional discrimination

144. The principle of equality and the prohibition of discrimination have been recognized as *jus cogens* norms in the IAHRs.<sup>134</sup> Likewise, the prohibition of age discrimination has been recognized by the I/A Court H.R., as already indicated in this report, and derived from the ADRDM, the ACHR, and the CPM itself. The corresponding obligation to eradicate age discrimination is derived from the above finding and is based on Article 4.a of the CPM. Article 5 of the Convention on Older Persons provides an explicit mandate to prohibit intersectional discrimination against "persons of different sexual orientations and gender identities, migrants, persons living in poverty or social exclusion, people of African descent, and persons pertaining to indigenous peoples, the homeless, people deprived of their liberty, per-

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<sup>134</sup> I/A Court H.R., The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States Advisory Opinion OC-26/20 of November 09, 2020, Series A No. 26, par. 106.



sons pertaining to traditional peoples, and persons who belong to ethnic, racial, national, linguistic, religious, and rural groups, among others.”

145. Based on the above, the protection of equality and the prohibition of discrimination is formulated at a double level in the IAHRs as the duty of the State to guarantee and respect the rights set forth in the ACHR without any discrimination and specifically in the field of equality in legal regulations,<sup>135</sup> as can be seen in the autonomous regulation of Articles 1.1 and 24 of the ACHR. In these terms, the protection of equality before the law enshrines a right that also entails obligations on the part of the State to respect and guarantee the principle of equality and non-discrimination in the safeguarding of other rights and in all domestic legislation it adopts.<sup>136</sup>
146. However, the IACHR notes that this protection is not new in international human rights law. Several international instruments recognize the right to equality and non-discrimination on grounds of age. In the UHRs, the Vienna International Plan of Action on Aging<sup>137</sup> establishes among its principles for the development of public policies on aging the elimination of discrimination and segregation based on age and the promotion of solidarity and mutual support between generations. The United Nations Principles for Older Persons and the Proclamation on Ageing<sup>138</sup> refer to the participation and integration of older persons in society.<sup>139</sup> The Political Declaration and Madrid International Plan of Action on Ageing calls upon all States to promote and guarantee the full exercise of all human rights and fundamental freedoms of older persons, in particular by taking measures to combat age discrimination.<sup>140</sup>
147. In the IAHRs, the Regional Implementation Strategy for Latin America and the Caribbean of the Madrid International Plan of Action on Ageing establishes the commitment of States to promote and protect the human rights and fundamental freedoms of all older persons and urges them to take action for the eradication of all forms of discrimination and violence against them.<sup>141</sup> The Brasilia Declaration reaffirms the commitment of States to eradicate discrimination and violence against older persons by urging the incorporation of a gender

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<sup>135</sup>/A Court H.R. Case of Atala Riffo and Girls v. Chile. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239.

<sup>136</sup>/A Court H.R. Case of Yatama v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Series C No. 127.

<sup>137</sup> UN, [Vienna International Plan of Action on Ageing](#), [World Assembly on Aging](#), 1982.

<sup>138</sup> United Nations. General Assembly, [Proclamation on Ageing](#) adopted by resolution 47/5 of 16 October 1992.

<sup>139</sup> United Nations, [General Assembly, United Nations Principles for Older Persons](#), approved by [Resolution 46/91](#) of December 16, 1991.

<sup>140</sup> United Nations. General Assembly, [Madrid Political Declaration and Madrid International Plan of Action on Ageing](#). Report of the Second World Assembly on Ageing, A/CONF.197/9, 12 April 2002.

<sup>141</sup> United Nations, ECLAC, [Regional Implementation Strategy for Latin America and the Caribbean of the Madrid International Plan of Action on Ageing](#). Regional Intergovernmental Conference on Ageing, Santiago, Chile, 2003.

perspective in policies and programs for older persons.<sup>142</sup> For its part, the San José Charter on the Rights of Older Persons in Latin America and the Caribbean urges States to adopt measures that guarantee older persons differential and preferential treatment in all areas and prohibit all types of discrimination against them, with special emphasis on gender-based discrimination through actions for the prevention, punishment, and eradication of all forms of violence against older women, including sexual violence.<sup>143</sup>

148. Based on the foregoing, the IACHR concludes that the prohibition of age discrimination is a rule of international law not only originating in a convention but also a customary nature. Likewise, the international obligation in the inter-American system is also intersectional. Thus, the eradication of age discrimination must also consider the confluence of other criteria that exacerbate the vulnerability of the elderly, such as gender, ethnic, and racial origin, economic condition, and other factors.
149. With regard to intersectionality and ageism, the IACHR will now refer to the situation and discrimination of older persons based on their gender, situation of deprivation of liberty, sexual orientation and gender identity, and migratory status.

## B. Intersectional protection against ageism

150. There are individuals, groups, and collectivities of older persons whose situation of vulnerability is aggravated by the confluence of other forms of historical discrimination that disproportionately affect their rights. The cross-cutting confluence of multiple factors of vulnerability and risk of discrimination associated with a series of particular conditions, such as being LGBTI, Afro-descendant, indigenous, disabled, migrant, deprived of liberty, living in poverty, living with HIV, among others, intensifies forms of exclusion, illegitimate restrictions of rights, and violence against the elderly. In the following section, the Commission addresses the particular impairments of the rights of some of these groups based on the replies to the Questionnaire and available information. Under no circumstances should this approach be interpreted as limiting the range of groups or not recognizing or omitting other groups.

### • Older Women

151. CEDAW Committee General Recommendation No. 27<sup>144</sup> on older women and the protection of their human rights noted that: “The discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination

<sup>142</sup> United Nations, ECLAC, [Brasilia Declaration](#). Adopted at the Second Regional Intergovernmental Conference on Aging in Latin America and the Caribbean, December 6, 2007

<sup>143</sup> United Nations, ECLAC, [San José Charter on the Rights of Older Persons in Latin America and the Caribbean](#). Adopted at the Third Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean on May 11, 2012.

<sup>144</sup> [UN, CEDAW, General Recommendation No. 27 on older women and protection of their human rights, 2010, para. 13paragraph 13.](#)

based on gender, ethnic origin, disability, poverty levels, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, internally displaced or stateless often experience a disproportionate degree of discrimination.”

152. The IACHR has pointed out that machismo, patriarchal attitudes, and the prevalence of sexist stereotypes, as well as historical discrimination based on the social fabric, have contributed to social tolerance of violence against women.<sup>145</sup> When this type of violence, whether physical or psychological, is directed against older women, it is predominantly manifested in the family environment. Likewise, abandonment, abuse, and neglect constitute persistent forms of violence that are often difficult to detect. Several factors contribute to the increased vulnerability faced by older women, in particular, their disadvantage in terms of income and health status.<sup>146</sup>
153. Likewise, the IACHR has established that discrimination does not affect all women equally and has considered that there are women who are exposed to greater risk of violation of their rights as a result of the intersection of several factors in addition to their gender, such as being indigenous, Afro-descendant, lesbian, bisexual, trans or intersex; women with disabilities and older women, as well as woman subject to specific risks.<sup>147</sup> Similarly, the Commission has established that certain situations increase the risk of women's rights being violated, as is the case of women deprived of their liberty and migrant, refugee, or displaced women. Likewise, certain contexts such as natural disasters, humanitarian emergencies, armed conflicts, or the breakdown of democratic institutions exacerbate the vulnerability of women.<sup>148</sup>
154. The IACHR has drawn particular attention to the need of the States of the region to prevent and eradicate all forms of violence and discrimination against older women, warning about the multiple forms of gender-based violence and discrimination that women face throughout their lives, with violence and discrimination that begin in childhood, continue in adolescence and adulthood, and are exacerbated during old age as a result of the intersectionality with age. The violence and discrimination are compounded by the particular impairments of their rights suffered by indigenous women, Afro-descendants, LGBTI persons, and persons deprived of liberty, migrants, and persons with disabilities. The vulnerability of older women is accentuated by the persistence of gender stereotypes that assign traditional roles to women from a very early age and that tend to cover up situations of abuse and vio-

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<sup>145</sup>IACHR. [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#). OEA/Ser.L/V/II. Doc.233/ 19, November 14, 2019.

<sup>146</sup> Inter-American Development Bank (IDB) [Three reasons why being a man or being a woman in old age matters](#). March 6, 2017.

<sup>147</sup>IACHR. [Standards and Recommendations regarding Violence and Discrimination against Women and Girls](#), OEA/Ser. L/V/II.Doc. 233, November 14, 2019, pp. 6 and 7.

<sup>148</sup>Ibid.

lence, making it difficult for older woman to defend themselves and put an end to violence and continued abuse.<sup>149</sup>

155. Despite the recognition of violence against older women, data collection is often a challenge in the States of the region. In Mexico, of the 34,041 cases of violence registered against older people in 2018, 45% were against women.<sup>150</sup> In Argentina, in 2018, the Domestic Violence Office (OVD) of the Supreme Court of Justice of the Nation registered 815 cases of domestic violence against people over 60 years of age, mostly women (77%).<sup>151</sup> In Peru, the National Program Against Family and Sexual Violence (PNCVFS), in 2018 recorded 8,108 cases of violence against older people, of which 74% were against women.<sup>152</sup> In all three countries, psychological violence against the elderly is particularly prevalent. Specifically, acts of psychological violence accounted for 77% of cases in Argentina,<sup>153</sup> and 69% of those registered in Peru.<sup>154</sup>
156. The IACHR also warns of the persistence of major challenges in the justice systems of the Hemisphere when it comes to addressing cases involving violence against older women from a gender and age perspective that takes their special vulnerability into account. The lack of an effective state response leads to impunity and perpetuates such violence and abuse.<sup>155</sup>
157. Inequality and historical discrimination against women are also present in areas such as social security and pension systems where women are negatively affected in terms of the coverage and adequacy of benefits.<sup>156</sup> In the pension system, the gender dimension is especially relevant in connection with the aging that is projected for the coming decades in Latin America. The population aged 65 and over comprises more women than men and population projections indicate that in 2050 the population of men aged 65 and over will represent 17.6% of the total number of men, while for women this percentage will reach 21.4%, indicating a marked feminization of aging.<sup>157</sup>

<sup>149</sup>IACHR. [Press Release No.240/20 " On the International Day for Older Persons, the IACHR Calls for Safeguards of the Rights of Older Persons and for the Eradication of Violence and Discrimination Against Older Women."](#)October 1, 2020.

<sup>150</sup> National Human Rights Commission, [Special Report on the Situation of the Human Rights of Older Persons in Mexico](#). February 19, 2019.

<sup>151</sup> Judicial Information Center (CIJ). [Elder Abuse: A Report from the Court's Domestic Violence Office](#). June 14, 2019.

<sup>152</sup> National Observatory on Violence against Women and Family Members. [Violence against the elderly](#). March 11, 2019.

<sup>153</sup> Judicial Information Center (CIJ). [Elder Abuse: A Report from the Court's Domestic Violence Office](#). June 14, 2019.

<sup>154</sup> National Observatory on Violence against Women and Family Members. [Violence against the elderly](#). March 11, 2019.

<sup>155</sup>Ibid.

<sup>156</sup> A. Arenas de Mesa, [Los sistemas de pensiones en la encrucijada: desafíos para la sostenibilidad en América Latina](#), ECLAC Books, No. 159 (LC/PUB.2019/19-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2019, pp. 16 and 17.

<sup>157</sup> A. Arenas de Mesa, [Los sistemas de pensiones en la encrucijada: desafíos para la sostenibilidad en América Latina](#), ECLAC Books, No.159 (LC/PUB.2019/19-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2019. pp. 214 216

158. Fewer women than men have paid jobs, largely due to an unequal distribution of household responsibilities and care for dependents (minors, people with disabilities, or the elderly). This stereotypical and unequal distribution of gender roles results in more women than men engaged in caregiving, child rearing, and housework, while men perform paid work. As a result, women are less active in the labor market and men are the ones who contribute and obtain pension rights in the event of disability, old age, and death. The paradigm shift in traditional gender standards and the increase in single-parent families have had an impact, among other factors, on increased incorporation of women into the labor market; however, childcare and home care continue to be mainly their responsibility.<sup>158</sup>
159. In addition, several studies show a trend toward occupational self-selection, which directs women to jobs in manufacturing, agriculture, and domestic service, jobs that, in addition to offering lower salaries, are often performed informally and, therefore, do not include insurance against old age and disability.<sup>159</sup> In 2016, the average employment rate in Latin America and the Caribbean was 75% for men and 49.9% for women, where 51.8% of women (46.2% of men) were in low-productivity sectors: a situation in which, in addition to participating less in the labor market, women, when employed in lower productivity jobs, receive lower wages and have more precarious working conditions.<sup>160</sup>
160. The cumulative effects of the various disparities in a woman's life make her particularly vulnerable to poverty, discrimination, violence, and marginalization in old age. These disparities tend to be accentuated when combined with other elements that generate or exacerbate vulnerability, such as, for example, the ethnic-racial origin of these women. Likewise, some studies show that women of African descent, indigenous women, and other ethnic-racial minorities are frequently overrepresented among people living in poverty and extreme poverty. In the United States, for example, women of African descent aged 65 and older have the highest poverty rate (21%), followed by Hispanic women (20%) and Native American women (19%), which is about twice the poverty rate of white women aged 65 and older (10%).<sup>161</sup>
161. Similarly, older LGBTI women experience high rates of poverty. In this case, there is a confluence of historical discrimination against this segment of the population and oppression

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<sup>158</sup> A. Arenas de Mesa, [Los sistemas de pensiones en la encrucijada: desafíos para la sostenibilidad en América Latina](#), ECLAC Books, No.159 (LC/PUB.2019/19-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2019. P. 228.

<sup>159</sup> A. Arenas de Mesa, [Los sistemas de pensiones en la encrucijada: desafíos para la sostenibilidad en América Latina](#), ECLAC Books, No.159 (LC/PUB.2019/19-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2019. P. 218.

<sup>160</sup> A. Arenas de Mesa, [Los sistemas de pensiones en la encrucijada: desafíos para la sostenibilidad en América Latina](#), Libros de la CEPAL, No.159 (LC/PUB.2019/19-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2019. P. 218. Pp. 228 and 229.

<sup>161</sup> Forbes. [The Financial Challenges Facing Older Women](#), April 12, 2018.

based on sexual orientation and/or gender identity, as well as only recent access to legal recognition and spousal protection.<sup>162</sup>

162. In addition, studies point to the existence of higher rates of physical limitations and disability among women over the age of 65 compared to men of the same age.<sup>163</sup> The health care needs that arise from these health conditions impact their autonomy, thus increasing their exposure to various forms of violence and abuse, and generating an additional economic disadvantage for them, who on average have access to fewer economic resources.
163. The Committee notes that the States of the region have adopted measures to expand their social safety nets, as well as public health and economic policies with a gender perspective. However, the IACHR recalls that such measures must incorporate in all laws and policies affecting older women a holistic approach to address the multiple and interconnected forms of discrimination they face by establishing affirmative actions and differential policies for older women in pension, health, and housing systems, among others, in order to protect their individual and collective rights.<sup>164</sup>

- **Older persons deprived of liberty**

164. Article 5 of the Convention on Older Persons identifies older persons deprived of their liberty as a vulnerable group and a victim of multiple discrimination. In the face of multiple or intersectional discrimination, the Commission has pointed out that the differentiated approach entails considering the particular conditions of vulnerability and the factors that may increase the risk of acts of violence and discrimination during incarceration.<sup>165</sup> According to the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (hereinafter "the PPL Principles"), States must ensure for the adoption of special measures to meet the particular health needs of persons at special risk, such as the elderly. Accordingly, such persons have the right, inter alia, to receive adequate medical care, to have permanent access to qualified and impartial medical personnel, and to have access to appropriate treatment and medicines.<sup>166</sup>

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<sup>162</sup> Justice in Aging. [Older Women & Poverty](#), December 2018.

<sup>163</sup> PRB. [Older Women Live Longer. But With More Disability and Financial Challenges Than Men](#), May 29, 2019.

<sup>164</sup>IACHR. [Standards and Recommendations regarding Violence and Discrimination against Women and Girls](#), OEA/Ser.L/V/II.Doc.233, November 14, 2019, p.9.

<sup>165</sup> IACHR, "[Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#) OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, par. 17.

<sup>166</sup>IACHR, [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#), [PPL Principles] OEA/Ser.L/V/II.131, 2008, Principle X.

165. Likewise, Article 13 of the CPM establishes specific standards for the protection of the rights of older persons deprived of their liberty.<sup>167</sup> That instrument indicates that States shall guarantee that any measure of deprivation of liberty shall be in accordance with law and they shall ensure that older persons who are deprived of their liberty following a trial have, on an equal footing with other segments of the population, the right to guarantees in accordance with international human rights law and to be treated in accordance with the objectives and principles set forth in that instrument. It also establishes the obligation of the States to guarantee access to special programs and comprehensive care, which include rehabilitation mechanisms for their reintegration into society. Along these lines, the PPL Principles and other international instruments prohibit discrimination against persons deprived of their liberty on various grounds, including age.<sup>168</sup>
166. In this regard, the IACHR has identified the persistence of challenges that make it possible to guarantee the rights of older persons deprived of liberty and that, as indicated by the Court, must be overcome by adopting a differentiated approach in the treatment of this population group.<sup>169</sup> In this regard, the Court has recognized that prison services have not been designed with the characteristics and needs of the elderly in mind.<sup>170</sup> These challenges were part of the request for an advisory opinion before the I.A Court H.R. and concern impairments that generate a disproportionate impact on their imprisonment, reflected, for instance, in: negligent medical care, lack of physical accessibility in prison facilities, difficulty in preserving family ties, and greater difficulty achieving their reintegration into society.<sup>171</sup> The IACHR is also concerned about the lack of information available from States regarding the number of elderly people in prisons.
167. Regarding the medical care received by the elderly, the IACHR has been able to identify the lack of specialized treatment suited to their age. In this regard, prisons do not have health programs that address the physical and mental condition of the elderly and that are aimed at identifying and treating chronic diseases of age, such as senile dementia, hyper-

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<sup>167</sup> CPM, Articles 5 and 13.

<sup>168</sup> IACHR, PPL Principles OEA/Ser/L/V/II.131, 2008, Principle II "Equality and non-discrimination"; CPM, Art. 5; United Nations, United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), E/CN.15/2015/L.6/Rev.1, May 21, 2015, Rule 2.1; UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Resolution 43/173, 9 December 1988, Principle 5.2, and UN, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Resolution A/RES/65/229, March 16, 2011, Rule 1. "Basic Principle."

<sup>169</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A, No. 29.

<sup>170</sup>I/A Court H.R. Differentiated approaches to certain groups of persons deprived of their liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 346.

<sup>171</sup> IACHR, Request for an Advisory Opinion to the Court, Differential Approaches to Persons Deprived of Liberty, November 25, 2019, UNODC. Handbook on Prisoners with Special Needs, 2009, p. 127. Prison Voice Washington, Correcting Food Policy in Washington Prisons: How the DOC Makes Healthy Food Choices Impossible for Incarcerated People & What Can be Done, 2016, pp. 2.

tension, Alzheimer's, respiratory diseases, diabetes, cancer, or liver disease.<sup>172</sup> There is also a lack of medical support equipment to enable the elderly to move around independently, such as wheelchairs, walkers, and canes.<sup>173</sup> The IACHR also has information regarding worrisome deficiencies in palliative and hospice care<sup>174</sup> for those suffering from terminal, life-threatening illnesses, or who require long-term care due to a significant loss of essential skills needed to perform basic activities.<sup>175</sup> In addition, cases have been reported of elderly people who were dying and not treated humanely.<sup>176</sup>

168. Likewise, it is of special concern to the Commission that, due to the insufficient supply of medicines and lack of permanent medical services in prisons, "accelerated aging" has reportedly increased, meaning that older persons could have a "psychological age" 10 to 15 years older than their physical age.<sup>177</sup>
169. In relation to physical accessibility, prisons are built for a younger population, which means that older people find it more difficult to move around in prison.<sup>178</sup> For instance, they may find it difficult to go up and down stairs or to access higher beds.<sup>179</sup> In addition, overcrowding -characteristic of the region's prisons- contributes to a lack of adequate classification, location, and distribution of beds, impairing the mobility of the elderly.<sup>180</sup>

<sup>172</sup> UNODC. *Handbook on Prisoners with Special Needs*, 2009, pp. 127, and Human Rights Watch, *Old Behind Bars: the Aging Prison Population in the United States*, January 27, 2012, p. 73. These problems are under-diagnosed and under-treated; 40-60% of older persons deprived of liberty have mental illness, but only one in three older persons has access to treatment. The Osborne Association. *The High Costs of Low Risk: The Crisis of America's Aging Prison Population*, 2018, p. 23.

<sup>173</sup> CNDH México *Special Report of the National Human Rights Commission on older persons in prisons in the Mexican Republic*, September 30, 2017, pp. 36. Defensoría de la Provincia de Buenos Aires, *Preocupa la situación de adultos mayores en cárceles bonaerenses (Worries regarding the situation of older persons in prison in Buenos Aires)*, October 25, 2018. See, for example: In Chile, the report on the case of an elderly person suffering from terminal cancer who died handcuffed to a hospital bed; 24 hours, *Familia de reo fallecido de Punta Peuco anuncia querrela criminal (Family of deceased Punta Peuco inmate announces criminal complaint)*, March 1, 2017.

<sup>174</sup> Hospice care can be provided in the home or in another facility, and is focused on providing palliative care to people who are expected to live six months or less. National Institute on Aging. *What are palliative care and hospice care?*

<sup>175</sup> Physicians rely on criminal officers to identify problems with the elderly even though they are not trained to do so. Human Rights Watch. *Old Behind Bars: the Aging Prison Population in the United States*, January 27, 2012, p. 63.

<sup>176</sup> Ramírez, Telésforo, *Envejeciendo en reclusión: un estudio de caso de los adultos mayores mexiquenses en situación de cárcel*, Kairós magazine, São Paulo, 2009, p. 167. See, for example: in Chile, a case was reported of an elderly person suffering from terminal cancer who died handcuffed to a hospital bed. 24 horas, *Family of deceased Punta Peuco inmate announces criminal complaint*, March 1, 2017; Human Rights Watch. *Old Behind Bars: the Aging Prison Population in the United States*, January 27, 2012, p. 86.

<sup>177</sup> The Osborne Association. *The High Costs of Low Risk: The Crisis of America's Aging Prison Population*, 2018, p. 22.

<sup>178</sup> Human Rights Watch. *Old Behind Bars: The Aging Prison Population in the United States*, January 27, 2012, p. 45. For example, in Mexico, 44% of the elderly are located on the upper floors of prisons, or at the top of bunk beds, and 29% lack access to the mobility provided by handrails or ramps. CNDH Mexico, *Informe Especial de la Comisión Nacional de los Derechos Humanos sobre personas mayores en los centros penitenciarios de la República Mexicana*, Sept. 30, 2017, p. 10.

<sup>179</sup> Cf. Human Rights Watch. *Old Behind Bars: The Aging Prison Population in the United States*, January 27, 2012, pp. 45-46.

<sup>180</sup> International Human Rights Clinic of the Harvard Law School Human Rights Program. *Del portón para acá se acaban los derechos humanos: injusticia y desigualdad en las cárceles panameñas*, 2008, p. 49.



170. In relation to special health needs, States must make the adaptations needed to provide services that comprehensively address the needs derived from the aging of the prison population with a level of care equivalent to that guaranteed outside prison. It is necessary that the inmate population be guaranteed an active and healthy aging process with proper health care, including availability, accessibility, acceptability, and quality in the provision of, for example, physiotherapy, occupational, or speech therapy, and treatments for sensory impairments, as well as ensuring access, as appropriate, to prostheses, wheelchairs, walkers, canes, crutches, hearing aids, or eyeglasses. Informed consent shall be required for all of the above.<sup>181</sup>
171. Regarding accessibility, the I.A Court H.R indicated that the elderly should be given first-floor rooms and single-level beds. Bathrooms and restrooms must be easy to access and use. In addition to the above, the use of social, medical, and recreational facilities must be guaranteed under equal conditions. Accessibility and adaptations needed to help the elderly move around in prisons must also be guaranteed, along with authorization of the use of wheelchairs, walkers, canes, crutches, hearing aids, or glasses, among others.<sup>182</sup>
172. With regard to contact with the outside world, the elderly are often confined in institutions far from their families or that impose visiting restrictions that do not take into account the differentiated impact that the instability of family ties has on them.<sup>183</sup> It also needs to be taken into account that close relatives of the elderly may also be of advanced age, which would result in increased difficulties in traveling and commuting to distant detention centers.<sup>184</sup> The loss of family ties can negatively influence the mental health of older people, exacerbate their isolation, and make it more difficult for them to be successfully reintegrated into society after their life in prison.<sup>185</sup>
173. In this regard, the I.A Court H.R. pointed out the importance of adopting alternative or substitute measures to execution of the sentence when the special needs of the elderly require it and when the prison systems do not address those needs. The Court has contemplated early re-

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<sup>181</sup>I/A Court H.R. [Differentiated approaches to certain groups of persons deprived of their liberty](#). Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, paras. 362-378.

<sup>182</sup>I/A Court H.R. [Differentiated approaches to certain groups of persons deprived of their liberty](#). Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, paras. 351-361.

<sup>183</sup> In Colombia, most of the women in the Jamundí Penitentiary and Prison Complex come from Bogotá and, because of the distance, have not been able to see their children for many years or have lost contact with them. Universidad del Rosario, [Older adults deprived of liberty in Colombia](#), SERES, Bogotá, 2014, p. 200. In this regard, see Defensoría de la Provincia de Buenos Aires, [Reglas de Brasilia y demás tratados internacionales en materia de prisión/reclusión de adultos/as mayores \(Rules of Brasilia and other international treaties on the imprisonment/reclusion of older adults\) Medidas morigeradoras de prisión \(Prison Mitigation Measures\)](#), 2018, p. 13.

<sup>184</sup> UNODC. [Handbook on Prisoners with Special Needs](#), 2009, p. 128; Universidad del Rosario, [Adultos mayores privados de la libertad en Colombia](#), SERES, Bogotá, 2014, p. 167.

<sup>185</sup> UNODC [Handbook on Prisoners with Special Needs](#), 2009, pp. 128.

lease or non-custodial sentences.<sup>186</sup> Notwithstanding the above, the IACHR and the Court point out that this type of measure must take into account the type and seriousness of the crime committed, the personality and background of the convicted person, his or her health, the risk to his or her life based on medical reports, the conditions of detention and the facilities for adequate care, the objectives of the sentence imposed and the rights of the victims.<sup>187</sup>

174. Likewise, with respect to outside contact with their families, the Court pointed out that the elderly should be lodged close to their homes, to facilitate contact and communication with families and people close to them, either in person or remotely (correspondence or digital media), even if this implies authorization for them to leave the prison. The Court has highlighted the importance that States should endeavor, through their social services, to reestablish contact between the elderly person deprived of liberty and his or her family members if this contact has been lost.<sup>188</sup>
175. In addition, with regard to social reintegration, the Commission notes the absence of programs in this area that focus on the elderly. Accordingly, there are almost no initiatives related to the knowledge of digital tools and new technologies, access to school education when turning 60, and the differential adaptation of sports and cultural activities according to capabilities and expectations.<sup>189</sup> Therefore, the IACHR recalls that, in accordance with the CPM, States must ensure that older persons have access to the rehabilitation mechanisms needed for their reintegration into society, in addition to promoting alternatives to their incarceration.<sup>190</sup>
176. In this regard, the IACHR Court indicated that the reintegration of the elderly should be pursued through programs -with a gender perspective- that seek their social reintegration, guaranteeing the strengthening of their family relationships and access to employment. At the end of their period of deprivation of liberty, older persons must have an individualized plan to prepare them for release from prison that provides them with official documents, housing, clothing, food, among other necessities for subsistence.<sup>191</sup>

<sup>186</sup>I/A Court H.R. [Differentiated approaches to certain groups of persons deprived of their liberty](#). Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 347.

<sup>187</sup> IACHR, Press Release No. 185/18, "[IACHR Expresses Concern over the Granting of Conditional Release to those Convicted of Serious Human Rights Violations in Chile](#)" August 17, 2018; I.A Court H.R. [Differentiated approaches to certain groups of persons deprived of their liberty](#). Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 348 and 351.

<sup>188</sup>I/A Court H.R. [Differentiated approaches to certain groups of persons deprived of their liberty](#). Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, paras. 386-396.

<sup>189</sup> Ramírez, Telésforo, [Envejeciendo en reclusión: un estudio de caso de los adultos mayores mexiquenses en situación de cárcel](#), Kairós magazine, São Paulo, 2009, pp. 165; Defensoría de la Provincia de Buenos Aires, [Preocupa la situación de adultos mayores en cárceles bonaerenses](#), October 25, 2018; The Osborne Association, [The High Costs of Low Risk: The Crisis of America's Aging Prison Population](#), 2018, p. 27.

<sup>190</sup> [Convention on the Human Rights of Older Persons](#), Article 13.

<sup>191</sup>I/A Court H.R. [Differentiated approaches to certain groups of persons deprived of their liberty](#). Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, paras. 379-385.

177. On the other hand, in relation to State measures aimed at guaranteeing the rights of older persons deprived of liberty, the IACHR highlights the information provided by Uruguay and Argentina. Thus, Uruguay reported on the application of alternative measures to imprisonment for this population group. In this regard, it indicated that in accordance with Article 9 of Law No. 17.897, home detention may be ordered for persons over 70 years of age, when this does not involve risks related to the circumstances in which the crime was committed.<sup>192</sup> For its part, Argentina reported on the actions taken by the National Directorate of Policies against Institutional Violence of the Secretariat for Human Rights and Cultural Pluralism. In particular, it indicated that this entity follows up on cases of institutional violence involving prison and other officials. This Directorate reportedly intervenes in order to promote and execute policies related to the protection of the human rights of the elderly during confinement.<sup>193</sup>

- **LGBTI seniors**

178. Article 5 of the CPM establishes the protection of the rights of older persons of diverse sexual orientations and gender identities as a vulnerable group and victim of multiple discrimination, urging States to develop specific approaches in their policies, plans, and legislation regarding them. Article 9 establishes the right of the elderly to safety and to a life free from violence, to be treated with dignity and to be respected and valued regardless of their sexual orientation and gender identity.<sup>194</sup>

179. The IACHR has emphasized with regard to LGBTI persons that the guiding principle in matters of sexual orientation, gender identity, and gender expression should be the self-identification of each person, in exercise of their right to free development of their personality.<sup>195</sup> However, the Commission notes that older people often choose not to self-identify as LGBTI for fear of the widespread discrimination and violence that, for decades, has existed against diverse sexual orientations, identities, expressions, and characteristics.<sup>196</sup> One of the consequences of this situation is the increasingly prolonged social isolation they experience, to the extent that they delay or avoid the act of publicly assuming their sexual orientation or gender identity.<sup>197</sup>

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<sup>192</sup> Argentina, Response to the Questionnaire, January 24, 2019.

<sup>193</sup> Argentina, Response to the Questionnaire, January 24, 2019.

<sup>194</sup> CPM, Articles 5 and 9.

<sup>195</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OEA/Ser.L/V/II.rev.2 Doc. 36, November 12, 2015, par. 11.

<sup>196</sup> Karen I. Fredriksen-Goldsen and Hyun-Jun Kim, "The Science of Conducting Research With LGBT Older Adults- An Introduction to Aging with Pride: National Health, Aging, and Sexuality/Gender Study (NHAS)," *The Gerontologist* 57, no. suppl\_1 (February 1, 2017): S1-14, doi:10.1093/geront/gnw212, cited in: [Movement Advancement Project \(MAP\) and Services & Advocacy for Gay, Lesbian, Bisexual & Transgender Elders \(SAGE\)](#) "Understanding issues facing LGBT older adults."

<sup>197</sup> SAGE – Advocacy and services for LGBTQ+ Elders (United States). See, in this regard, National Resource Center on LGBT Aging and SAGE - Advocacy and services for LGBTQ+ Elders, *Strengthen your state and local aging plan: A practical guide for expanding the inclusion of LGBT older adults*, p. 7

180. Likewise, the IACHR has warned about the intersectional discrimination that older persons are victims of in relation to their gender identity, noting in particular that "An important issue when considering the human rights situations of trans and gender-diverse persons who are also senior citizens is that most of them lived their lives during a time when there was no legal protection from discrimination based on gender identity or expression. On the contrary, many States had laws explicitly criminalizing trans and gender-diverse persons, as well as State public policies that tended to persecute LGBTI persons and to ignore persecution and acts of violence against them."<sup>198</sup>
181. In this regard, it is important to note that, regardless of the diversity of cultural, social, and economic contexts, LGBTI elders today share the experience of having lived through the HIV/AIDS pandemic crisis that began in the 1980s and the consequences of which persist today.<sup>199</sup> In addition, there is a prevailing stereotype that older adults lack sexuality, even within their own families and homes<sup>200</sup>, which means that no attention is drawn to LGBTI older adults and, consequently, there is a lack of specific care and support programs.<sup>201</sup>
182. Thus, in Mexico it has been detected that "many older homosexual people hide their preferences most of their lives due to rejection by society and/or their own family." In the case of trans people, "[...] when they die, they are buried with an identity with which they did not agree with, or many others are forced to assume the "heteronormative" role imposed by society in certain situations, such as entering a home or residence (*casa de día o alguna estancia*), for fear of being singled out or discriminated against."<sup>202</sup> In a similar vein, a study conducted in Costa Rica detected that there is fear and distrust among older adults when it comes to discussing their sexual orientations and to revealing their needs or expectations.<sup>203</sup>
183. On the other hand, according to results of a survey carried out in 2013 in the United States of America, 25% of the people surveyed who identified themselves as LGBTI were be-

<sup>198</sup> IACHR, [Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights](#), OEA/Ser.L/V/II. Doc. 239, August 7, 2020, p. 44. (Par. 106)

<sup>199</sup> Karen I. Fredriksen-Goldsen and Hyun-Jun Kim, "The Science of Conducting Research With LGBT Older Adults- An Introduction to Aging with Pride: National Health, Aging, and Sexuality/Gender Study (NHAS)," *The Gerontologist* 57, no. suppl\_1 (February 1, 2017): S1 -14, doi:10.1093/geront/gnw212, cited in: Movement Advancement Project (MAP) and Services & Advocacy for Gay, Lesbian, Bisexual & Transgender Elders (SAGE), "[Understanding issues facing LGBT adults](#)".

<sup>200</sup> Dotta Brenes, Andrea. [La invisibilización como forma de discriminación múltiple: \(Invisibilization as a form of multiple discrimination:\) Personas adultas mayores LGBT en Costa Rica \(LGBT older adults in Costa Rica\)](#), *Revista Costarricense de Trabajo Social* No. 23 (2017).

<sup>201</sup> Gracia Ibañez, Jorge. Human rights and the social standing of the LGBT elders. A specific issue: elder abuse, in *El Tiempo de los Derechos*, Number 12, year 2011, Edited by Proyecto Consolider, p. 18.

<sup>202</sup> Mexico. [Instituto Nacional de las Personas Adultas Mayores de México, Diversidad Sexual en personas adultas mayores](#)

<sup>203</sup> Suárez Rehaag, Daria (coord.), *Situación de población adulta mayor LGBT en Costa Rica*, Centro de Investigación y Promoción para América Central de Derechos Humanos, February 2015, p. 25.

tween 50 and 64 years old, while 9% were 65 or older<sup>204</sup>, resulting in approximately 2.7 million people who require care programs with a differentiated approach, in that country alone. These programs need to address the main problems faced by LGBTI older adults: lack of employment or income, access to housing, neglect or abuse by formal caregivers, mistreatment in their residential setting, feelings of loneliness due to not being able to share important issues about their identity, as well as the lack of legal recognition, at times, of the bonds they have established with their partners, sons or daughters, and the consequent impossibility of accessing social security benefits, among others.<sup>205</sup>

184. A Colombian civil society organization informed the IACHR that the various forms of violence and rights violations faced by LGBTI persons are based on prejudice towards their sexual orientation or gender identity, exacerbating the overall vulnerability endured by older persons. Violence resulting from discrimination led to fifty LGBTI people over the age of 60 being murdered between 2010 and 2017. The organization also reported evidence of different forms of violence and discrimination within the social environments in which they live, as well as the lack of specific programs and regulations that allow them to improve their material living conditions, and to access health services, decent housing, or the economic resources needed to guarantee basic conditions for their subsistence. For their part, older transgender people face specific problems that exacerbate their vulnerability due to: a) having been excluded from their family and community support networks at an early age and finding themselves without support in old age; b) having particular health problems associated with systematic barriers to access to specialized medical services; c) marginalized subsistence conditions (having to beg or live on the street); and d) the consequences -physical and psychological- of the multiple violence encountered throughout the course of their lives.<sup>206</sup>
185. For their part, several studies carried out in Costa Rica, El Salvador, and Panama conclude that national laws for the protection of the elderly "do not contemplate at any time the particularities of LGBTI persons, thus reproducing the existing gaps in national legislation, which place LGBTI elderly persons in a double condition of vulnerability and hinder equal respect of their rights."<sup>207</sup> A study on the self-perception of LGBT older adults in Guatemala singles out as important obstacles: "a) the violent social environment against the LGBT

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<sup>204</sup> [Pew Research Survey of LGBT Americans: Age, Gender and Race](#), June 13, 2013, cited in Movement Advancement Project (MAP) and Services & Advocacy for Gay, Lesbian, Bisexual & Transgender Elders (SAGE), "Understanding issues facing LGBT adults."

<sup>205</sup> Fabá, Josep and Feliciano Villar, et. al., "Idosos LGBT que Vivem em Instituições de Cuidados: Desafios e Barreiras para a Manutenção dos Direitos Sexuais", in: PSI UNISC, Santa Cruz do Sul, v. 2, n. 2, July/December 2018, pp. 7-18, p. 6.

<sup>206</sup> Colombia Diversa, Response to the Questionnaire, February 4, 2019.

<sup>207</sup> [Situación de población adulta mayor LGBT en Costa Rica \(Situation of the LGBT older adult population in Costa Rica\)](#) Centro de Investigación y Promoción para América Central de Derechos Humanos - CIPAC, 2015; [Situación de población adulta mayor LGBT en El Salvador \(Situation of the LGBT older adult population in El Salvador\)](#) Centro de Investigación y Promoción para América Central de Derechos Humanos - CIPAC, Espacio Mujeres Lesbianas Salvadoreñas por la Diversidad - ESMULES, 2015; [Situation of the LGBT older adult population in Panama](#) Centro de Investigación y Promoción para América Central de Derechos Humanos - CIPAC, Asociación de Hombres y Mujeres Nuevos de Panamá, AHMNP, 2015.

population, especially the aggressions against the LGBT older adult population and b) the absence of support from the State, both with regard to the formulation of laws and in its role as defender of existing rights." Older lesbian and bisexual women are reported to be especially economically disadvantaged.<sup>208</sup>

186. Likewise, based on the information available, the IACHR warns about trans or gender-diverse elderly people who have experienced discrimination based on their gender identity during their lives and are immersed in a cycle of exclusion and poverty<sup>209</sup> and suffer mistreatment by caregivers and health care providers.<sup>210</sup>
187. Although the above issues may be common to LGBTI older persons, the IACHR reaffirms that the life experiences of LGBTI persons are diverse and are conditioned by the intersection of a variety of circumstances and personal characteristics, which may increase the effects of violence and discrimination.<sup>211</sup> Therefore, the formulation of policies and programs for LGBTI older adults should include the recognition that the life experience of each of them has been impacted by the intersection of different social identities,<sup>212</sup> including ethno-racial origin, nationality, migration status, living with HIV, and functional diversity.

- **Elderly people in a situation of human mobility**

188. The CPM provides for the protection of the rights of elderly migrants in Article 5. Likewise, the intersectionality of older persons in a situation of human mobility has been highlighted by other instruments,<sup>213</sup> with particular emphasis on gender.<sup>214</sup>

<sup>208</sup> *Situación de población adulta mayor LGBT en Guatemala (Situation of the LGBT older adult population in Guatemala)*: Según su propia percepción (According to their own perception). Centro de Investigación y Promoción para América Central de Derechos Humanos - CIPAC, Red Nacional de la Diversidad Sexual y VIH de Guatemala, Asociación Lambda; p.6, 2021.

<sup>209</sup> IACHR, *Poverty and Human Rights*, September 7, 2017, par. 442.

<sup>210</sup> Erin Fitzgerald, *No Golden Years at the End of the Rainbow: How a Lifetime of Discrimination Compounds Economic and Health Disparities for LGBT Older Adults* (Washington DC: The National Gay and Lesbian Task Force, 2013).

<sup>211</sup> IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OEA/Ser.L/V/II.rev.2 Doc. 36, November 12, 2015, par. 262 and Press release No. 152/17: "IACHR Calls on States to Combat Discrimination against Older Persons," October 4, 2017.

<sup>212</sup> Otis, M. and Debra Haley, "The Intersection of Identities of LGBT Elders: Race, Age, Sexuality, and Care Network" in *Handbook of LGBT Elders*, Debra Haley (editor), Springer International Publishing, 2015, p. 84.

<sup>213</sup> General Assembly resolution AG/RES. 1971 (XXXIII-O/03) "The Protection of Refugees, Returnees, and Stateless and Internally Displaced Persons in the Americas" pays particular attention to the human rights of the elderly, urging States Parties to fully and effectively implement their obligations under the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol, while "[...] paying special attention to vulnerable groups and the differentiated protection needs of women, children, and the elderly."

<sup>214</sup> *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), Brazil, Article 9*: "The States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom."

189. Likewise, the IACHR recalls the special protection needs of certain population groups which include, among others, elderly migrants in vulnerable situations due to the risks of violation of their human rights to which they are particularly exposed and in which one or more factors of discrimination converge, increasing their levels of vulnerability.<sup>215</sup> The IACHR notes that the challenges faced by older persons in the context of mobility and at any stage of the migration process (departure, transit through another country, entry into the country of destination, settlement in the country of destination and/or return to the country of origin) involve particular risks and demands for specialized attention due to their high level of vulnerability and accumulation of factors that expose them to greater discrimination.<sup>216</sup>
190. Some national migration laws refer to older migrants as a group requiring particular attention. In Chile, Article 22 of the Law on Migration and Aliens establishes that the national migration and foreign nationals policy must consider "[...] Respect for and promotion of the human rights of migrants, enshrined in the Constitution of the Republic, in the laws and in the international treaties ratified by Chile and which are in force, and which apply to foreigners regardless of their migratory status, with special concern for vulnerable groups such as children, adolescents, women, people with disabilities, and the elderly."<sup>217</sup>
191. In Mexico, Article 73 of the Migration Law establishes that "The Secretariat shall implement actions to provide adequate attention to migrants who, due to different factors or a combination of them, face situations of vulnerability, such as children and adolescents, women, victims of crimes, persons with disabilities, and the elderly [...]."<sup>218</sup>
192. Article 11 of Peru's Migration Law<sup>219</sup> instructs the Migration Department and the Ministry of Foreign Affairs to inform the competent authorities of situations of vulnerability in which migrants find themselves, particularly the elderly, and some other groups, so that they can adopt the corresponding administrative or jurisdictional steps needed to ensure protection of their rights. Likewise, Article 226 defines foreigners in a situation of vulnerability as those who are unprotected or at risk of not having access to the full exercise of their fundamental rights in the country, and Article 227 identifies the elderly as a group meriting special protection.

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<sup>215</sup> IACHR, [Inter-American Principles on Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Trafficking in Persons](#), Resolution No 04/2019, December 7, 2019, Principle 16.

<sup>216</sup> In addition, it is important to differentiate between the terms 'refugee' and 'migrant' as they constitute two distinct groups governed by separate legal frameworks. Refugees are persons fleeing war or persecution who have crossed an international border and have specific international protection under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and other legal instruments. For their part, migrants choose to move not because of a direct threat of persecution or death, but primarily to improve their lives by finding work or for education, family reunification, or other reasons. Unlike refugees, who cannot safely return to their country, migrants continue to receive protection from their government and are treated by countries in accordance with their own immigration laws and procedures (UNHCR, 2016).

<sup>217</sup> [Law No.21.325, Migration and Alien Law](#), April 11, 2021, Article 22.

<sup>218</sup> [Immigration Law](#), Last amendment published in the Official Gazette, May 20, 2021, Article 75.

<sup>219</sup> [Migration Law, Legislative Decree No.1350](#), January 6, 2017, Articles. 11, 226, and 227.

193. In other cases, migration laws establish special protection for elderly nationals abroad. Article 21(4) of Ecuador's Organic Law on Mobility establishes that Ecuadorians abroad, both in transit and in the country of destination, who are in a situation of vulnerability shall receive priority attention, and defines, *inter alia*, the elderly as a priority group. Likewise, Article 24(16) establishes the special powers of consulates to provide assistance and protection in cases required by persons under the custody and responsibility of hospitals or health centers, special institutions for children, adolescents, and elderly adults in human mobility.<sup>220</sup> In the case of El Salvador, the Special Law for the Protection and Development of Salvadoran Migrants and their Families recognizes the elderly as a subject of special protection.
194. The IACHR notes with concern forced displacement involving older persons, as they require specific attention and assistance from transit and host countries, as well as procedures that guarantee expeditious recognition of protection statutes. In this regard, in its visit to the Venezuela-Colombia border in February 2020, the IACHR noted with extreme concern the serious effects of the humanitarian crisis as a factor in the displacement of millions of Venezuelan people, and in particular reported on the precarious situation of groups of people in a situation of historical discrimination and exclusion, such as the elderly, as it considers that a different approach is needed to address forced migration. In addition, the IACHR observed that many still economically active persons who leave Venezuelan territory may be leaving behind a population with care and intergenerational support needs, and that there is a risk that this situation may disproportionately affect girls and women and older persons.<sup>221</sup>
195. Apart from considering social, economic, and political factors as causes of expulsion and generators of forced migration movements, the IACHR has also drawn attention to natural disasters such as hurricanes, torrential rains, floods, and droughts, which have devastated the countries of Central America and the Caribbean and which have become increasingly important as a factor of expulsion in the migration of many people in the region, with a clear impact on various human rights, such as the right to life, health, food, property, housing, work, among others, and where, among other groups, the elderly "are those hardest hit by phenomena of this type and, at the same time, are those least able to adapt to the challenges that these phenomena create."<sup>222</sup>

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<sup>220</sup> Organic Law on Human Mobility, January 31, 2017, Articles 21.(4) and 24.(16).

<sup>221</sup> IACHR, Press Release No. 106/20, [IACHR Presents Preliminary Observations and Recommendations Following Historic On-Site Visit to Monitor the Human Rights Situation in Venezuela](#), May 8, 2020.

<sup>222</sup>IACHR. [Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico](#). OEA/Ser.LV/II. Doc. 48/13, December 30, 2013, párr.76



196. Additionally, in relation to immigration detention situations, the IACHR has recommended that, among other groups, the elderly should not be placed in immigration detention<sup>223</sup>. Likewise, the IACHR has established that "unjustified detention of migrants, delayed access to procedural rights, or moderate physical discomfort may in themselves constitute torture or cruel, inhuman or degrading treatment or punishment when applied in conjunction or for a prolonged or indefinite period. The threshold for torture, cruel, inhuman or degrading treatment or punishment is even lower in cases of migrants in vulnerable situations and people who have experienced traumatizing events, (...) such as older persons."<sup>224</sup>.

### C. National policies and programs related to the eradication of age-based and intersectional discrimination

197. In the area of institutions and public policies regarding the right to non-discrimination based on age, the IACHR appreciates the fact that, as reported to the IACHR, it is a formal and regulatory requirement in the legislations of the States that make up the OAS. In some cases the prohibition of age discrimination is explicit in constitutional norms or general laws<sup>225</sup> or tangentially mentioned in specific rules (e.g. age discrimination in employment)<sup>226</sup> or because the State is a party to the CPM.<sup>227</sup> In other cases, the prohibition of age discrimination is not explicit, even though general protection of the elderly is mentioned and its enforcement is entrusted to a specific executive body.<sup>228</sup>

198. There are also programs that make the normative anti-discrimination mandate viable, but they vary in intensity and, thus, in their ability to produce results. Accordingly, from the information submitted, the Commission notes that States (Argentina, Bolivia, Canada, Costa Rica, Ecuador, Guatemala, Peru, Uruguay) have various institutions for eradicating discrimination in general and based on age, as well as operational plans for that purpose. Unfortunately, the information gap is so wide and general in the case of other States, that it is impossible to identify

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<sup>223</sup>IACHR. [Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico](#). OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, par. 577.5. An example of good practice is the [Regulation of the Dominican Republic's Migration Law](#) of August 15, 2014, which states in art.134 "[...] Detention should never be used in cases of minors, pregnant or lactating women, the elderly, and asylum seekers."

<sup>224</sup> IACHR, [Inter-American Principles on Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Trafficking in Persons](#), Resolution No 04/2019, December 7, 2019, Principle 15.

<sup>225</sup> Brazil, Canada, Dominican Republic, Guatemala, Guyana, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, and the United States.

<sup>226</sup> Bahamas

<sup>227</sup> Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, México, and Uruguay

<sup>228</sup> Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname and Venezuela.

the concomitant existence of an institutional framework with any type of operational or programmatic instrument that explicitly includes the eradication of age discrimination.

199. Below, the IACHR will detail the policies and programs on equality and non-discrimination as reported by the States. The information related to this section is systematized in Table 2: Equality and non-discrimination, and in more detail in the Annex to this report.
200. Thus, in Argentina, in addition to the approaches being pursued by the National Directorate of Policies for Older Adults (DiNAPAM) of the Ministry of Social Development and the National Institute of Social Services for Retirees and Pensioners (INSSJP-PAMI), and the programs of the National Social Security Administration (ANSES), at the national level, there is the National Institute against Discrimination, Xenophobia, and Racism (INADI). This agency is geared to developing national policies to combat all forms of discrimination, xenophobia, and racism and promoting and carrying out federal and cross-cutting public policies coordinated with civil society and aimed at achieving a diverse and egalitarian society. In the course of its work, this agency has focused in several areas on discrimination against the elderly.<sup>229</sup>
201. In Bolivia, Point 3.2.10 of the Multisectoral Plan for the Comprehensive Development of Older Adults 2016-2020 (Bolivia, June 2017), by Ministerial Resolution No 007/2018 of January 24, 2018,<sup>230</sup> states that "Age discrimination is the stereotyping of beliefs, norms, and values, as well as the practice of distinctions, exclusions, restrictions, or preferences that prevent the recognition, enjoyment, or exercise of the fundamental rights and freedoms of older adults." In this regard, Point 5 of the Plan (on Planning), establishes Plurinational Program No. 13 as a Policy: "Reducing discrimination, racism, violence, abuse, neglect, and dispossession of older adults", which is part of Axis 4 on "Older adults in vulnerable situations", and Pillar 1 on "Eradication of extreme poverty."
202. Likewise, the Multisectoral Plan of the Plurinational State of Bolivia against Racism and all forms of Discrimination 2016-2020<sup>231</sup> aims to improve the quality of life of populations in vulnerable situations by overcoming racist and/or discriminatory practices and attitudes as a fundamental mechanism to eliminate extreme poverty in the country. Within this Plan, the elderly are identified as a vulnerable segment of the population due to gender and generational reasons.

<sup>229</sup> Argentina, Response to the Questionnaire OAS Official Letter No. 5, January 9, 2019.

<sup>230</sup> Bolivia, Reply to the Questionnaire. [Plan Multisectorial de Desarrollo Integral de las Personas Adultas Mayores 2016-2020 \(Multisectoral Plan for the Comprehensive Development of Older Adults 2016-2020\)](#) (Bolivia, June 2017).

<sup>231</sup> Plurinational State of Bolivia, Ministry of Cultures and Tourism, Vice Ministry of Decolonization, National Committee against Racism and All Forms of Discrimination, [Multisectoral Plan of the Plurinational State of Bolivia to Combat Racism and All Forms of Discrimination, 2016–2020](#).

203. In Canada, in the province of Ontario, there is a policy called "Policy on discrimination against older people because of age<sup>232</sup>", which provides guidance on the interpretation of the provisions of the Code in relation to discrimination against older people on the basis of age, also taking into account the intersectionality of age with the fact of belonging to groups historically discriminated against, such as women and migrants. In Costa Rica, one of the objectives of the National Policy on Aging and Old Age 2011-2021 (PNEV 2011-2021), is the elimination of age discrimination.<sup>233</sup>
204. Ecuador created the National Council for Intergenerational Equality (CNII), an institution responsible for ensuring the full exercise of the constitutional rights of children, adolescents, young people, and the elderly. This institution performs specific functions for the formulation, mainstreaming, monitoring, and evaluation of public policies for equality and non-discrimination. The National Agenda for Intergenerational Equality<sup>234</sup> is a key instrument of the National Decentralized System of Participatory Planning, which together with the National Development Plan shapes the planning of all public sector entities at all levels of government and is a point of reference for non-state entities.
205. For its part, the Guatemalan Human Rights Ombudsman informed the IACHR that there are no specific programs, policies, or regulations to combat discrimination against older persons.<sup>235</sup>
206. In Peru, Administrative Resolution (*Resolución Jefatural*) No. 000295-2017-JN/ONPE creates the Institutional Strategic Plan 2018-2021 of the National Office of Electoral Processes (ONPE) and in paragraph 4 of the Policy Guidelines specifies that its actions will be based on inclusion, equality, interculturality, and innovation. Supreme Decree No 012-2018-VIVIENDA (housing) adopting the National Accessibility Plan 2018-2023 contains a differential approach toward older persons.<sup>236</sup> Regarding the right to equality and non-discrimination in relation to the right to health, Supreme Decree No. 016-2016-SA adopts the Intercultural Health Sector Policy and aims to regulate intercultural health actions at the national level in order to achieve health care as a human right favoring inclusion as well as equal opportunities between men and women of all ages. Finally, with respect to social protection, the Pension 65 program adopts the Gender Mainstreaming Plan through Directorial Resolution No 067-2018-MIDIS/P65-DE and the Disability Mainstreaming Plan through Directorial Resolution No 066-2018-MIDIS/P65-DE, thereby promoting the right to gender equality and non-discrimination.

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<sup>232</sup> [Policy on discrimination against older people because of age](#), Ontario Human Rights Commission, 2002.

<sup>233</sup> Costa Rica, Response to the Questionnaire. [National Policy on Aging and Old Age 2011-2021 \(PNEV 2011-2021\)](#).

<sup>234</sup> [Ecuador, Response to the Questionnaire, February 13, 2019. National Agenda for Intergenerational Equality-ANII 2017-2021 \(Annex 1\)](#).

<sup>235</sup> Human Rights Ombudsman of Guatemala, Response to the Questionnaire, January 2, 2019.

<sup>236</sup> Peru, Response to the Questionnaire, March 20, 2019. [Supreme Decree No. 012-2018-VIVIENDA adopting National Accessibility Plan 2012 - 2018.](#), August 5, 2018.

207. Uruguay informed the IACHR about the National Sexual Diversity Plan drawn up in 2018 by the National Council on Sexual Diversity, which includes specific actions for older persons. In particular, it seeks to generate knowledge on the subject and raise awareness, strengthen the gender and sexual diversity perspective in health and care services for the elderly, as well as sensitize the population in general. The State also reported that several agencies targeting the elderly population have conducted workshops, seminars, and activities to raise awareness of the rights of older persons. In this regard, the National Institute for the Elderly (Inmayores) of the Ministry of Social Development has a specific Training and Awareness-Raising Department focusing on topics such as the dissemination of the Convention, the consolidation of older persons as subjects of rights, abuse and mistreatment, education and sexuality, as well as cross-cutting issues such as gender and sexual diversity.<sup>237</sup>

## 4.2 Right to independence and autonomy of older persons

208. In this section, the IACHR describes international standards on the right to independence and autonomy and how they are handled in the domestic law of the OAS States. First, the Commission describes the standards regarding independence and autonomy as cross-cutting principles applicable to the human rights of the elderly; and also as autonomous rights in their relationship with other rights such as the right to long-term care, recreation, legal personality and capacity, and informed consent in health. Second, the IACHR reports on the information received regarding policies and programs that seek to ensure the independence and autonomy of older persons through general policy instruments, as well as their relationship with specific rights such as education, health, and recreation.

### A. International standards regarding the right to independence and autonomy of older persons

209. The concepts of independence and autonomy are vital for protecting the human rights of the elderly and have been formulated as general principles and as autonomous rights in international instruments on the subject. As general principles, independence and autonomy should guide the interpretation and application of the human rights of older persons. This way of interpreting and applying the rights of the elderly should be taken into account by all OAS member states in accordance with the inter-American treaties to which they are party and with the ADRDM itself.

210. As regards interpretation and actual realization of these rights to independence and autonomy, the IACHR notes that several instruments of international law provide concrete parameters useful to States. For example, the San José charter on the rights of older persons in Latin America and the Caribbean states that the political, public, and social participation of older persons is a fundamental human right and calls for respect for their autonomy and independence in deci-

<sup>237</sup> Uruguay, Response to the Questionnaire, January 31, 2019.

sion-making. It also refers to enhancing the independence of older persons through preferential access to medicines, equipment, technical aids, and comprehensive rehabilitation services; autonomy through free, prior, and informed consent for any medical intervention; and independence, autonomy, and dignity based on guaranteed access to these social services needed to provide care for the elderly given their specific needs and characteristics.<sup>238</sup>

211. Likewise, the IACHR considers that, *mutatis mutandis*, the provisions regarding the notion of autonomy and independent living set forth in the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol are important when it comes to States determining the scope of those rights. These regulations entail a shift from a system based on the protection of rights centered on disability to a system of protection of rights that identifies capabilities and provides support for the exercise of autonomy. Accordingly, the Committee on the Rights of Persons with Disabilities states that "independent living/living independently" means enabling them to exercise choice and control over their lives and make all decisions concerning their lives.<sup>239</sup> The IACHR considers that this definition of independent living is also applicable to the rights of older persons.
212. In light of the above, the IACHR notes that the United Nations Principles for Older Persons specifically refer to independence as a principle that translates into the ability to have material access to adequate food, water, housing, clothing, health care, access to other income-earning opportunities, and education.<sup>240</sup> Similarly, the Committee on the Rights of Persons with Disabilities indicates that "[p]ersonal autonomy and self-determination are fundamental to independent living, including access to transport, information, communication and personal assistance, place of residence, daily routine, habits, decent employment, personal relationships, clothing, nutrition, hygiene and health care, religious activities, cultural activities and sexual and reproductive rights."<sup>241</sup> Accordingly, the IACHR observes that autonomy and independence with respect to certain groups and populations, such as the elderly, should not be construed as abstention from intervening in the sphere of their decisions, but rather as requiring the adoption of concrete measures so that these persons are able to make the decisions they consider appropriate for their own lives.
213. In this regard, the IACHR considers it appropriate for the Committee to note that "(...) [i]ndependent living is an essential part of the individual's autonomy and freedom and does not

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<sup>238</sup> San José Charter on the rights of older persons in Latin America and the Caribbean adopted at the Third Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean. San José de Costa Rica, 8 -11 May, 2012

<sup>239</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on the right on living independently and being included in the community, CRPD/C/GC/5, 27 October 2017, para. 16.

<sup>240</sup> United Nations, [GA Resolution 46/91 of 16 December 1991](#), para. 1.

<sup>241</sup> Committee on the Rights of Persons with Disabilities, General comment No. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5, 27 October 2017, para. 6.

necessarily mean living alone. It should also not be interpreted solely as the ability to carry out daily activities by oneself. Rather, it should be regarded as the freedom to choose and control, in line with the respect for inherent dignity and individual autonomy (...)."<sup>242</sup> Therefore, in the case of the elderly, their autonomy and independence must be understood as access to options for the exercise of their rights that allow for dignified and active aging until death.

214. The Committee on the Rights of Persons with Disabilities has indicated that independent living “is one of the widest ranging and most intersectional articles of the [Persons with Disabilities] Convention and has to be considered as integral to the full implementation of the Convention.<sup>243</sup>” The IACHR considers that, in the case of older people, autonomy and independence serve the same function with respect to the CPM and any other human rights standard that is applied to the situation of the elderly.
215. However, in their formulation as specific rights, the CPM addresses the right to independence and autonomy in Article 7. In its initial section, this standard provides that the States recognize the right of older people to independence and autonomy in making decisions according to their life plan and the adoption of programs to make them a reality. In addition, Article 7 identifies three specific obligations for States Parties: a) respect for the autonomy of older persons in making decisions and for their independence in carrying out their actions; b) freedom to choose their place of residence without being obliged to live under a specific system; and c) progressive access to home care services and support, including personal assistance to facilitate their inclusion in the community.
216. In addition to the above, the Commission finds that, in a cross-cutting and interdisciplinary manner, autonomy and independence are associated with other autonomous rights upheld in the CPM. Thus, Article 12 refers to it as one of the objectives of the right of the elderly receiving long-term care services and Article 22 refers to it as one of the objectives of the right to recreation, leisure, and sports.
217. Likewise, the autonomy of an older person includes the recognition of his or her legal personality, which involves the recognition of legal capacity on an equal footing with others in all aspects of life, as well as making decisions about his or her life. The autonomy of older persons established in Article 7 is directly related to their legal capacity established in Article 30 “Equal recognition as a person before the law.” The text of this article is practically the same as Article 12 of the Convention on the Rights of Persons with Disabilities

<sup>242</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5, 27 October 2017, para. 16.

<sup>243</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5, 27 October 2017, par. 6.

(CRPD)<sup>244</sup>, which modified the then dominant paradigm on the legal capacity of persons, establishing that persons with disabilities have legal capacity on equal terms with others, and that judicial intervention is aimed at establishing a support system for decision-making purposes, maintaining legal capacity for as long as possible, and reserving restriction of legal capacity for exceptional and extreme situations only. In this regard, the IACHR has pointed out “that people with disabilities have equal rights and should thus have full legal capacity and the power to make choices about every aspect of their lives”<sup>245</sup>, which is also applicable to the capacity of older persons.

218. On the other hand, the higher prevalence of cognitive impairment in the elderly may entail the risk of harm from the exercise of legal capacity without adequate supports and safeguards. Article 30 of the Convention on Older Persons starts from the principle that capacity is presumed and establishes the necessary supports and safeguards to protect the older person against possible dangers of abuse when he/she is vulnerable in relation to capacity. The designation of supports then reinforces the capacity of the person affected by a condition that could impair the exercise of autonomy and helps avoid possible abuses from the social environment.

219. One area in which the exercise of autonomy, independence, and legal capacity of older persons is often affected is health, in particular the right to grant free and informed consent, which is established in Article 11 of the CPM. That Article highlights the obligation of States to guarantee this right by developing and implementing mechanisms to prevent abuses and strengthen the capacity of older persons to fully understand treatment options available, including their risks and benefits.

## B. National policies and programs for protecting the independence and autonomy of older persons

220. Based on the information reported, the IACHR observes that recognition of the right to autonomy and independence of older persons in national regulatory frameworks is still pending in States of the region that have not yet ratified the Convention on Older Persons. The IACHR places on record that some special norms regarding the situation of the rights of older persons also recognize autonomy and independence, as in the case of Mexico and Peru, but no information was provided regarding how those norms are implemented through policies and programs. In other cases, States reported norms on the protection of the rights of persons with disabilities and the protection of their right to autonomy in general terms, as in the case of Costa Rica, but without indicating how those protections materialize with regard to older persons.

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<sup>244</sup>United Nations [The Convention on the Rights of Persons with Disabilities and its Optional Protocol](#), adopted on December 13, 2006 at the United Nations Headquarters in New York; entry into force on May 3, 2008.

<sup>245</sup> IACHR, Press Release No. 289/20, “The IACHR Calls on States to Adopt Measures to Guarantee People with Disabilities Full Legal Capacity from a Human Rights Approach,” December 3, 2020.

221. From reports on operations, the Commission concludes that independence and autonomy are incorporated in general national policies, special programs, and technical standards tailored to specific circumstances. In national policies, the States incorporate the independence and autonomy of the elderly as general principles that seek to ensure that older persons continue to make decisions about their lives, as is the case in Chile, Colombia, El Salvador, Jamaica, and Uruguay. The IACHR emphasizes that, in the case of Jamaica, its policy explicitly establishes that the principle of autonomy and independence is correlated with the State's duty to ensure that older persons can satisfy their basic human needs.
222. The Commission also notes that another group of States has been incorporating independence and autonomy in specific programs aimed at the realization of other rights such as health, as is the case in Argentina; the right to education, as in Ecuador; or the right to recreation, as in Trinidad and Tobago. For the Commission, it is worth noting that some States, such as Argentina and Uruguay, manage functional risk assessment systems using disability and dependency indicators, so that they can be addressed through the health system.
223. Below, the IACHR will detail policies and programs regarding the right to independence and autonomy reported by the States. The information related to this section is systematized in Table 3: Right to independence and autonomy, and in greater detail in the Annex to this report.
224. In Argentina, the National Program for Active Aging and Health of Older Adults (ProNEAS) under the Ministry of Health and Social Welfare works with a concept of Primary Health Care (PHC) adapted to the elderly, which includes the development of tools to assess health in terms of functionality, thereby helping to ensure that older persons can continue to fully exercise their rights in an autonomous and independent manner.<sup>246</sup> Comprehensive gerontological assessment is a tool that, first, facilitates the identification of vulnerable elderly people by establishing the risk of functional deterioration through a disability and dependence indicator and, then, allows for early intervention to help avoid or delay complications that occur as a result, thereby addressing inequities and improving health outcomes. For this reason, health teams functional assessment of the elderly receive training in functional assessment of the elderly.
225. The objective of the National Fund for the Elderly program of Chile's National Service for the Elderly (SENAMA) is to promote the autonomy, self-management, social integration, and independence of the elderly. The program also seeks to provide quality services for the care of people in situations of dependency and/or vulnerability that help satisfy their basic needs and improve their quality of life. This program finances projects in three ways: 1)

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<sup>246</sup> As part of ProNEAS, the National Advisory Commission (CNA) operates to determine criteria for action with an interdisciplinary approach to achieve the goal of "active and healthy aging." The CNA is made up of representatives of governmental and non-governmental entities related to older persons' issues, and has published documents with recommendations and standards for enhancing quality of life for the elderly. Since 2016, a national program has been conducted for the detection of vulnerability and frailty in the elderly, with training activities for personnel to achieve early detection of frailty and vulnerability that segment of the population.



Self-managed: financing projects conceived, drawn up, and implemented by senior citizens' organizations, through a competitive bidding process. It seeks to generate and develop self-management capabilities, autonomy, and independence in participating older adults; 2) Intermediate executors: promoting initiatives put forward by public or private institutions that pursue actions to enhance the functional autonomy of older adults with some degree of dependency who therefore require the care of third parties to carry out their daily activities; 3) Institutional agreements: financing initiatives developed by institutions that work with vulnerable older adults and provide complementary services and support as part of the overall social protection framework.

226. The National Policy on Human Aging and Old Age 2015-2024<sup>247</sup> of Colombia establishes as one of its general objectives: "To enable older adults of today and the future to achieve an autonomous, dignified, and integrated old age, within the framework of the promotion, realization, and restitution of human rights based on actions, at inter-sectoral and territorial, public, and private levels, that impact the conditions required for the social, political, economic, and cultural development of individuals, families, and society." In its specific objectives, the aforementioned policy calls for "[p]romoting active, satisfactory, and healthy aging geared to ensuring the lifelong autonomy, integration, security, and effective participation of Colombians and facilitating the construction of dignified, humanized and meaningful lives."
227. In Ecuador, the instrument "Technical standards for the implementation and provision of support and care services for the elderly" is one of the main tools that establishes and promotes the autonomy and independence of the elderly.<sup>248</sup> In particular, Section 5.3 of the Technical Standard establishes the "Socio-Educational Process," which consists of a set of activities, interactions, and exchanges that take place in the teaching-learning process, in daily life, and/or spaces designed for that purpose. In the socio-educational context, training for older persons is tailored to their circumstances and seeks to promote the skills they need to carry on their daily lives. By absorbing the content of this training, the elderly foster their ability to perform basic and instrumental activities in their daily lives, expanding their abilities, skills, habits, attitudes, and values that help them maintain their independence and autonomy.
228. The Public Policy for the Elderly<sup>249</sup> of El Salvador<sup>250</sup> establishes in its guiding principles regarding the autonomy of the elderly that "any program, plan, or action derived from this policy must

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<sup>247</sup> [Política Colombiana de Envejecimiento Humano y Vejez \(Colombian Policy on Human Aging and Old Age\) 2015-2024](#), Ministry of Health, 2015.

<sup>248</sup> [Normas técnicas para la implementación y prestación de servicios de atención y cuidado para personas mayores](#), Ministry of Economic and Social Inclusion, Ministerial Agreement (Acuerdo Ministerial) 094 of May 7, 2019.

<sup>249</sup> Government of El Salvador, Consejo Nacional de Atención Integral a los Programas de los Adultos Mayores (CONAIPAM), [Política Pública de la Persona Adulta Mayor](#), October 2017.

<sup>250</sup> Asociación de Gerontología de El Salvador (AGESALVA), Response to the Questionnaire, January 29, 2019.

seek, as its primary objective, to help ensure that the elderly continue making decisions about their lives, as this is a basic part of recognition of the elderly. Self-determination of the older adult must be guaranteed in the family, institutional, community, and social spheres." Likewise, with respect to independence, it establishes that: "In addition to decision-making, the Policy must promote the ability of older persons to continue to carry out activities in the family or community, despite environmental barriers or limitations, in an independent manner."

- 229.** Jamaica's National Policy for Senior Citizens<sup>251</sup> states that the keystone of all policy aimed at the elderly "is to help older persons maintain the maximum degree of independent living." Likewise, the National Policy has as essential objectives "to meet the challenge of a growing, healthier and more active senior citizen population, ensuring that senior citizens can meet their basic human needs" and "to enhance the self-reliance and functional independence of senior citizens and facilitate continued participation in their family and society."
- 230.** The Ministry of Social Development and Family Services of Trinidad and Tobago offers the Senior Activity Center Program in multi-service facilities in partnership with community-based non-governmental organizations located in eleven communities throughout the country. This program is aimed at people 55 years of age and older and provides physical, mental and social stimulation through educational and recreational activities, aimed at supporting the independence and personal growth of the elderly.
- 231.** Uruguay's National Integrated Care System (SNIC) aims to guarantee the right of dependent persons to receive quality care under conditions of equality, by promoting the provision of autonomy, care and assistance to dependent persons, as well as child development, within the framework of a model of co-responsibility between families, the State, the market, and the community, and with gender equity.

#### **4.3. Right to health and informed consent in health matters**

##### **A. International standards regarding the right to health and informed consent of older persons**

- 232.** The I/A Court of H.R. has pointed out that the right to health is protected in the IAHRs.<sup>252</sup> It based that assertion on Article 26 of the ACHR, Article XI of the ADRDM,<sup>253</sup> and other

<sup>251</sup> National Council for Senior Citizens, Ministry of Labour and Social Security, [National Policy for Senior Citizens](#), 1997.

<sup>252</sup>I/A Court H.R. Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, par. 116.

<sup>253</sup> ADRDM, Article XI: "Every person has the right to the preservation of his health sanitary and social measures relating to food, clothing, housing and medical care to the extent permitted by public and community resources."

norms of international *corpus iuris*,<sup>254</sup> from which it concluded that every human being has the right to the enjoyment of the highest attainable standard of health that allows him/her to live in dignity, health being understood not only as the absence of disease or illness, but also as a complete state of physical, mental, and social well-being, derived from a lifestyle that allows people to achieve an integral balance.

233. However, with the adoption of the CPM, the development of the right to health and informed consent has been more clearly defined in the IAHR. Article 19 of the CPM establishes the right to physical and mental health of older persons, without any discrimination, requiring States to commit to designing and implementing intersectoral public health policies aimed at comprehensive care that includes health promotion, disease prevention, and care at all stages, as well as rehabilitation and palliative care for the elderly in order to promote the enjoyment of the highest level of physical, mental, and social well-being. In addition, Article 11 of the Convention on Older Persons establishes the inalienable right of older persons to express their free and informed consent in the field of health and prohibits public or private institutions and health professionals from administering any medical or surgical treatment, intervention, or research without the informed consent of the older person.
234. The obligation of States regarding informed consent involves developing and implementing appropriate and effective mechanisms to prevent abuse and to strengthen the capacity of older persons to fully understand existing treatment options, the risks they entail, and the benefits associated with them. Such mechanisms should ensure that the information provided is adequate, clear, and timely, available on a non-discriminatory basis, accessible, and presented in an understandable manner tailored to the cultural identity, educational level, and communication needs of the older person. Likewise, in cases of life-threatening medical emergencies and when it is not possible to obtain informed consent, the exceptions established in accordance with national legislation may apply.
235. In line with the above, in the framework of palliative care provided for in the CPM, Articles 6, 11, 12, and 19 of that instrument contain various obligations for States regarding palliative care. These norms include non-discriminatory access to palliative care; the right of older persons to express informed consent prior to palliative care treatment; the adoption of measures needed to ensure that elderly persons receiving long-term care services are provided with palliative care services that include the patient, and his or her family and environment; the promotion of measures needed to make palliative care services available and accessible to the elderly; access to and availability of medications needed for palliative care; and the promotion and strengthening of research and professional and technical academic training in geriatrics, gerontology and palliative care.

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<sup>254</sup>I/A Court H.R. Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, par. 114.

236. The IACHR notes that all of these provisions in the CPM are based on a treaty that is directly applicable to the States Parties to the CPM. Notwithstanding the foregoing, the Commission finds that these prerogatives are also derived from the content of the right to health, which comprises various international legal norms and standards of the inter-American system, so that they are enforceable in all OAS States, regardless of whether a State is party to a specific inter-American instrument or not.
237. As already noted in this report, the I/A Court H.R. has developed standards that include older persons with the right to health and more broadly in relation to economic, social, cultural and environmental rights.<sup>255</sup> In the case of *Poblete Vilches et al. v. Chile*,<sup>256</sup> the I/A Court H.R. draws attention to the importance of envisaging the elderly as subjects of rights with special protection with respect to health care services and respect for their autonomy and independence.<sup>257</sup> Likewise, this precedent of the Inter-American Court recognizes that consent must be prior, free, full, and informed.<sup>258</sup> Complete information must be transmitted to patients so that they can exercise this right.<sup>259</sup> The I/A Court H.R. included the possibility of consent granted by a representative or substitute, applicable in those cases in which the patient is unable to make a decision about his or her health, in which case this power is transferred to his representatives, relatives, authorities, or institutions designated by law.<sup>260</sup>

## B. National policies and programs for the effective exercise of the right to health and informed consent

238. The Commission notes that the approach to the health of older persons covers a variety of factors, judging by States' reports on their concern for active and healthy aging and the prioritization of specific plans and campaigns for the health of older persons in terms of gen-

<sup>255</sup> I/A Court H.R., Case of Flores v. Peru. Judgment of March 6, 2019. Series C No. 375. I/A Court HR, Case of Poblete et al. v. Chile. Judgment of March 8, 2018. Series C No. 349. Series C No. 267. I/A Court H.R., Case of Yakye Axa Indigenous Community v. Paraguay. Judgment of June 17, 2005. Series C No. 125.

<sup>256</sup> I/A Court H.R., Case of Poblete et al. v. Chile, Judgment of March 8, 2018. Series C No. 349.

<sup>257</sup> In its judgment in the Poblete case, the Inter-American Court refers to "a broad regional consensus in the consolidation of the right to health, which is explicitly recognized in different Constitutions and the domestic laws of the States of the region" and makes use of the international corpus iuris on the right to health, which includes comparative international instruments and those of the Inter-American system, but also highlights the pronouncements of the Committee on Economic, Social and Cultural Rights of the United Nations (ESCR Committee) on the duties of States in the area of health, and mentions the analysis of the right to health undertaken by the OAS Working Group to Examine the Periodic Reports of the States Parties in relation to the progress indicators.

<sup>258</sup> I/A Court H.R. Case I.V. v. Bolivia, Judgment of November 30, 2016, Series C No. 329. Note: Due to an express request, the name of the alleged victim is kept confidential, and the acronym "I.V." is used to refer to the alleged victim.

<sup>259</sup> I/A Court H.R. Case of Poblete Vilches et al. v. Chile, Judgment of March 8, 2018, Series C No. 349, par. 162.

<sup>260</sup> Flávia Piovesan, Mariela Morales Antoniazzi, and Erika Montero, *Avances en la protección de las personas mayores en el Sistema Interamericano: perspectivas y retos para la efectividad de sus derechos (Progress with protecting older adults in the inter-American system: Outlook and challenges for effective implementation of their rights)*, Instituto de Estudios Constitucionales del Estado de Querétaro, 2019, p. 376.

eral health, mental health, and palliative care. The IACHR also takes note of preventive health programs or programs to encourage access to health care.

239. Thus, active and healthy aging is regulated through specific programs for this purpose, as in the case of Argentina, Brazil, or Ecuador; or it is included as part of broader national policies, as in the case of Colombia. With respect to access to health services, the IACHR notes that Argentina, Guatemala, and Jamaica reported specific operations targeting the elderly. Along these lines, the Commission highlights that some States promote preferential access to health services, as is the case of Colombia with its special counters for attending to older persons; Costa Rica with prioritized care campaigns; Mexico with personalized care at comprehensive care centers; or Uruguay with predetermined or scheduled care services, as well as national surveys to determine the number of people who require access to these services.
240. With regard to palliative care, the Commission notes that Argentina, Ecuador, El Salvador, and Paraguay reported the existence of programs for caregivers to address quality of life in cases of cognitive impairment and palliative care. In terms of health prevention, the Commission found that Bolivia promotes health care through food security; Chile and Jamaica through preventive medicine. Worth noting is that States have reported the existence of programs for the mental health of the elderly, as is the case in the Dominican Republic.
241. Finally, the IACHR finds that Peru has also opted for conditional cash transfer programs for persons over 65 years of age to stimulate the functional capacity, autonomy, and health of its elderly population.
242. Below, the IACHR will detail the policies and programs related to the right to health reported by the States. The information covered in this section is systematized in Table 4: Right to health and informed consent, and in more detail in the Annex to this report.
243. The State of Argentina informed the IACHR about a number of policies and programs aimed at promoting healthy aging, including the Highly Active Program (*Programa Bien Activos*) run by the National Directorate of Policies for Older Adults (DINAPAM); the National Program for Active Aging and Health for Older Adults (ProNEAS) and the Include Health Program, both of which are overseen by the National Ministry of Health. Thus, the Bien Activos Program aims to promote an active and healthy lifestyle in and with the elderly through the practice of physical and recreational activity, thereby enabling access to physical and recreational activity for the elderly, strengthening intra and intergenerational ties, and redefining public space as an area of social participation.
244. The Federal Include Health Program is a public health insurance system that guarantees access to health care services for mothers with seven or more children, people with disabil-

ities, and people over 70 years of age with Non-Contributory Pensions (PNC), as well other groups, with a view to generating equitable conditions for the exercise of the right to health throughout the national territory through the governments of the 24 jurisdictions. In order to promote efficient management and a comprehensive approach, Incluir Salud works in coordination with Cobertura Universal de Salud (CUS) Medicamentos, for the delivery of First-Aid Kit medicines (*medicamentos del botiquín*), and with the Sumar and Programa Redes programs, to strengthen primary health care.

245. In relation to care policies, DINAPAM conducts a number of programs: National Program for Home Caregivers; National Program for the Promotion of Quality of Life for People with Cognitive Impairment, Alzheimer's and other Dementias; and the National Program for the Promotion of Personal Autonomy and Universal Accessibility for the Elderly.
246. The State of Bolivia has a disease prevention program called "Carmelo" (Nutritional Supplement for the Elderly) governed by Law No. 475, which seeks to contribute to the nutritional food security of Bolivia's older persons. According to the information provided, the Autonomous Territorial Entities are responsible for ensuring the sustainability of the program and for the purchase of the product for all senior citizens who do not have insurance. Delivery takes place at first-tier health facilities and during family or, where applicable, community visits for uninsured older adults and at polyclinics for the insured.<sup>261</sup>
247. The State of Brazil operates the Vivir Program - Active and Healthy Aging<sup>262</sup> coordinated by of the Ministry of Women, Family and Human Rights, which aims to enhance the quality of life of the elderly through digital and social inclusion with participation in health activities, digital technology, education, and physical mobility.
248. In Chile, the Ministry of Health's Preventive Medicine Examination for the Elderly is available, in which once an older person is evaluated in terms of her risk of losing functions, a classification is established to be used as the basis for taking preventive, rehabilitative, or treatment actions to promote healthy aging.<sup>263</sup> Also noteworthy is the Chile Cuida Program, a Support and Care System of the Ministry of Social Development and Family, which seeks, through a variety of services, to accompany and support people in a situation of dependency, caregivers, their households, and their support network, including among its target population people over 60 years of age in a situation of dependency.<sup>264</sup> For its part, the National Service for Older Adults (SENAMA) has launched the Active Aging Program,

<sup>261</sup> Bolivia, Response to the Questionnaire, Official Letter JPB-OEA-NV04-192019, January 24, 2019.

<sup>262</sup> Brazil, Presidency of the Republic, [Programa Vivir- Envejecimiento Activo y Saludable, Decree 10.133](#) of November 26, 2019.

<sup>263</sup> [Ministry of Health, National Program for Older Adults](#), accessed on April 22, 2021.

<sup>264</sup> [Ministry of Social Development, Chile Cuida - Sistema de Apoyos y Cuidados](#), accessed on April 22, 2021.

which aims to contribute to the active aging of socially vulnerable elderly people, by providing knowledge and opportunities for personal, cognitive, biological, and physical development, and their participation in society.<sup>265</sup>

249. In Colombia, the National Policy on Aging and Old Age 2015 - 2024<sup>266</sup> is built around six core concepts that involve the simultaneous commitment of both the State and society and families: the aging of society, human rights, active aging, longevity, comprehensive social protection, and the organization of care. The first goal pursued by this Policy is "The promotion and guaranteeing of human rights," which prompted construction of the Integrated Methodology of Social Participation of and for the Elderly -MIPSAM, which departments, districts, and municipalities use as a benchmark for drawing up their respective action plans, in line with the provisions of the Policy. In addition, the Ministry of Health and Social Protection issued Resolution 1378/15 on health care and social protection for the elderly, which establishes priority and preferential care measures for this segment of the population. The proposed actions include establishing a preferential line, specifying that health promoting entities (EPS) must have special counters for older adults, conduct a comprehensive assessment, and immediately deliver the prescribed medicines, among other measures.<sup>267</sup>
250. Strategic Line V on comprehensive health of the National Policy on Aging and Old Age 2011-2021<sup>268</sup> of Costa Rica establishes the guarantee of universal access of the older adult population to the Social Security Health System and access to comprehensive provision of health care services, as well as the promotion of healthy lifestyles. Several specific health care programs for the elderly are conducted, such as the Expanded Immunization Program (vaccination for older adults), Basic Comprehensive Care for the Elderly (tier 1 care), and specialized geriatric care at the National Hospital of Geriatrics and Gerontology.
251. The "My Best Years Mission"<sup>269</sup> program in Ecuador is based on an active and healthy aging approach and aims to improve the quality of life of people over 65 years of age, particularly those living in more vulnerable conditions. The program is made up of various components, including a minimum package of care and follow-up services for the elderly (initial evaluation to identify any health vulnerability and medical follow-up throughout the year based on the clinical findings), as well as residential gerontological services, home care, and other services.

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<sup>265</sup> [Servicio Nacional del Adulto Mayor \(SENAMA\), Programa Envejecimiento Activo](#), accessed on April 22, 2021.

<sup>266</sup> [Ministry of Health and Social Protection, National Policy on Aging and Old Age 2015 - 2024](#), August 2015.

<sup>267</sup> [Ministry of Health and Social Protection, Resolution 1378](#) of April 28, 2015 establishing provisions for the health care and social protection of the elderly and for commemoration of the "Day of the Golden Colombian (Día del Colombiano de Oro)."

<sup>268</sup> [Office of the President of the Republic of Costa Rica, Consejo Nacional de la Persona Adulta Mayor \(CONAPAM\), Política Nacional de Envejecimiento y Vejez 2011-2021](#).

<sup>269</sup> [Government of the Republic of Ecuador, Secretaría Técnica Plan Toda una Vida, Misión Mis Mejores Años](#), accessed on April 23, 2021.

252. The Public Policy for the Elderly<sup>270</sup> of El Salvador focuses on nine areas: empowerment, participation and exercise of rights, protection and access to justice, comprehensive health and care, social services, education, physical activity, sports and culture, habitat and accessibility, income and access to benefits, and attention to specific groups. In relation to integral health and care, it establishes courses of action to be pursued to promote the specialization of health and sexual and reproductive health care services, including rehabilitation services for the elderly at all levels, and to promote palliative care programs.
253. The National Policy on Comprehensive Care for Older Adults in Guatemala 2018-2032 seeks its general objective<sup>271</sup> to guarantee access to basic services for older adults through intersectoral actions implemented by public institutions in a way that fosters active and healthy aging. One of its specific objectives is to strengthen public health services specializing in geriatrics and gerontology so as to provide health care with a comprehensive approach.
254. One of the specific objectives of the Action Plan for Active and Healthy Aging 2015-2017<sup>272</sup>, of Honduras is to promote the adaptation and tailoring of health and social protection systems to meet the challenges associated with population aging and the health needs and well-being of older adults. It also calls for the strengthening of the human resources capabilities needed to care for the health and promote the well-being of the elderly.
255. Jamaica's National Policy for Senior Citizens<sup>273</sup> states that "older persons should have access to health care to help them maintain or regain the optimal level of physical, mental and emotional well-being and to prevent or delay the onset of disease." The National Policy also recognizes the need for health services intervention to "allow senior citizens to enjoy a high quality of life", with the following objectives : (a) promote Primary Health Care programs that emphasize health promotion, including health education and promotion activities, nutrition programs, physical and mental health services, dental health services, sanitation and environmental programs, treatment of common diseases, and provision of essential drugs; (b) focus on health maintenance and prevention of both physical and mental illnesses; and (c) ensure that primary health care is available, accessible and affordable to older persons. To facilitate the achievement of the objectives, the National Policy includes

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<sup>270</sup> Government of El Salvador, Consejo Nacional de Atención Integral a los Programas de los Adultos Mayores (CONAIPAM), [Política Pública de la Persona Adulta Mayor](#), October 2017.

<sup>271</sup> Comité Nacional de Protección a la Vejez (CONAPROV), [Política Nacional de Atención Integral a las Personas Adultas Mayores en Guatemala período 2018-2032](#), 2018.

<sup>272</sup> Secretariat of Health and Secretariat of Development and Social Inclusion, [Action Plan for Active and Healthy Aging 2015-2017](#), 2015

<sup>273</sup> National Council for Senior Citizens, Ministry of Labour and Social Security, [National Policy for Seniors Citizens](#), 1997, under revision. Containing the document entitled [Green Paper, National Policy for Senior Citizens](#), 2018.



as one of its key strategies that health policies should recognize that care of senior citizens should go beyond disease orientation and involve the total well-being approach.<sup>274</sup>

256. Priority Strategy 1.5 of the Sector Program derived from the National Development Plan 2019-2024<sup>275</sup> of Mexico includes encouraging the participation of communities in the implementation of programs and actions, with a community health approach, to safeguard the rights of the elderly. In addition, in connection with the programs undertaken by the National Institute for the Elderly, the Comprehensive Care Center (CAI) provides first-tier medical care with a comprehensive gerontological approach to the elderly in order to promote their well-being and the exercise of their human rights.
257. The Panamanian Ministry of Health's Elderly Health Program seeks to ensure the development of Technical and Administrative Standards, Management Guidelines, and Protocols for Comprehensive Health Care for the Elderly, as well as compliance with them through timely monitoring in health facilities, with a view to helping recover the autonomy of the elderly and improve their quality of life. In addition, it operates the Palliative Care Program, which aims to provide and develop high quality health services, preferably at home, for terminally ill patients.
258. The Ministry of Public Health and Social Welfare of Paraguay provides care for the elderly through a number of health services.<sup>276</sup>
259. Peru's Pension 65 Program includes intersectoral and intergovernmental actions to maintain functional capacity, autonomy, and health, as well as to step up care for the elderly by providing: self-care, family and community care, and care from state services. Through an agreement with the Ministry of Health (MINSa), free health care is provided (in a comprehensive health package) to Pension 65 users of MINSa's national health facilities.
260. In 2019, the Dominican Republic launched the "SeNaSa Cuida de Ti" program aimed at older adults to guarantee them comprehensive health care services, social protection, and a better quality of life. The initiative involves the National Health Insurance (SeNaSa) and the National Health Service (SNS), in collaboration with the National Council for the Elderly (CONAPE), and services for the elderly include home care, health promotion, disease prevention, assisted mobility equipment, food supplements and health supplies, 24-hour specialized and emergency medical care throughout the network, palliative care coverage, guaranteed medicines, and the formation of Recreation and Stimulation Groups for the Elderly. Another health initiative in the Dominican Republic that includes the elderly is the 2020-2025 Response to

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<sup>274</sup> Jamaica, Response to the Questionnaire, January 31, 2019

<sup>275</sup> Ministry of Health, [Sector Program derived from the National Development Plan 2019-2024](#).

<sup>276</sup> Paraguay, response to the Consultation Questionnaire, February 4, 2019.

Dementias Plan, <sup>277</sup>which includes in its interventions the formulation and implementation of a program to reduce stigma, discrimination, and social exclusion, as well as the promotion of the human rights of older adults with dementia and their family members.

261. Uruguay's National Integrated Health System (SNIS) has sought to change the care model by strengthening first-tier care. In the case of the elderly, this has meant the establishment of scheduled annual check-ups for persons aged 65 to 74 and scheduled quarterly check-ups for persons aged 75 years and over and for all older vulnerable persons. This is a multidimensional evaluation registered in the senior citizen's card, which includes mental, social, functional, dental, ophthalmological, and auditory data. Palliative care has been included in the Comprehensive Health Care Plan as a mandatory benefit since 2008. It is estimated that 16,000 patients in Uruguay require palliative care.
262. Likewise, Uruguay also reported that the Palliative Care Unit of the Ministry of Public Health conducted the National Palliative Care Survey in 2016 and, according to the data provided, coverage was 43%, a figure that meets the goal established in the 2020 National Health Objectives of achieving more than 40% coverage. With regard to mental health, Uruguay has a Mental Health Law (Law No. 19.529) aimed at guaranteeing the right to mental health protection for the country's residents, with a perspective based on respect for the human rights of all persons and particularly of those persons who use the National Integrated Health System's mental health services. As a result of this law, the Ministry of Health drew up a National Mental Health Plan providing for the delivery of such services by all integral health care providers.

#### **4.4 Right of all the persons to community participation, integration accessibility, and personal mobility**

263. In this section, the IACHR will describe the standards related to community participation and integration as a general principle for the interpretation and application of the rights of older persons, as well as their relationship with other rights of older persons such as receiving long-term care services, education, culture, political rights, non-discrimination, and eradication of stereotypes. The IACHR also delves in greater depth into the relationship between community participation and integration with respect to accessibility and personal mobility. In the second part of this section, the Commission details the plans and programs implemented by States to enhance community participation and integration in general, as well as specific experiences geared to integration through educational programs, employment, strengthening of community organizations, community centers, and accessibility programs to improve community participation and integration.

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<sup>277</sup> Ministry of Public Health, [Plan de Respuesta a las Demencias en la República Dominicana 2020-2025](#), June 2020.

## A. International standards regarding rights to community participation, integration, accessibility, and personal mobility

264. The IACHR notes that community participation and integration has been addressed in international instruments both as a general principle applicable to the rights of older persons and as an autonomous right in itself. As a general principle, community participation and integration is multidimensional in its application and affects various aspects of the economic, social, cultural, and political life of older people<sup>278</sup> by increasing their well-being and facilitating active and healthy aging.<sup>279</sup> Thus, States must incorporate the principle of community participation and integration in, for example, their vision of development<sup>280</sup>, in economic and social life,<sup>281</sup> in the formulation of recreation and leisure programs,<sup>282</sup>, and in other areas.
265. In light of the above, as a general principle, the Commission finds that the main objective of including community participation and integration in international instruments is to provide guidelines for the interpretation and application of human rights with respect to older persons. For the IACHR, the interpretation and application by all OAS States of the rights of older persons must be based on the inter-American treaties to which they are party and on the ADRDM itself.
266. Community participation and integration are human rights addressed in Article 8 of the CPM. This Convention establishes that older persons have the right to active, productive, full, and effective participation and integration within the family, the community, and society. As specific measures for the exercise of the right to active participation and community integration, the CPM establishes that the States shall: (a) create and strengthen mechanisms for the participation and social inclusion of older persons in an environment of equality that allows for the eradication of prejudices and stereotypes that hinder the full enjoyment of those rights; (b) promote the participation of older persons in intergenerational activities to strengthen solidarity and mutual support as key elements of social development; and (c)

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<sup>278</sup> United Nations, [Political Declaration and Madrid International Plan of Action on Ageing, Second World Assembly on Ageing, Madrid, Spain, April 8-12, 2002, Article 5.](#)

<sup>279</sup> United Nations, [AG Resolución 46/91, 16 December 1991.](#) “7. Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations. 8. Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.. 9. Older persons should be able to form movements or associations of older persons.”; United Nations [Political Declaration and Madrid International Plan of Action on Ageing, Second World Assembly on Ageing, Madrid, Spain, April 8-12, 2002, Article 12.](#)

<sup>280</sup> [Vienna International Plan of Action on Ageing, World Assembly on Ageing, 26 July-6 August 1982](#), para. 25 (a). “The aim of development is to improve the well-being of the entire population on the basis of its full participation in the process of development and an equitable distribution of the benefits therefrom”; [Political Declaration and Madrid International Plan of Action on Ageing, Second World Assembly on Ageing, Madrid, Spain, 8-12 April 2002, Issue 1, pp. 14.](#)

<sup>281</sup> [Vienna International Plan of Action on Aging, World Assembly on Aging, 26 July-6 August 1982](#), Recommendation 37.

<sup>282</sup> [Vienna International Plan of Action on Aging, World Assembly on Aging, 26 July-6 August 1982](#), Recommendation 48.

ensure that community facilities and services for the general population are available, on an equal footing, to older persons and take their needs into account.

267. The IACHR also notes that various forms of community participation and integration are proposed across the board<sup>283</sup> in line with other rights recognized in the Convention on Older Persons. Thus, the Commission finds that, irrespective of ratification of or accession to the CPM, the programs and plans for the realization of human rights guaranteed in other international treaties and the ADRDM must be interpreted and applied in such a way as to take the participation and integration of the elderly into account.

268. Thus, States need to consider the connection between community participation and integration with respect to the rights of older persons to receive long-term care services,<sup>284</sup> education,<sup>285</sup> culture,<sup>286</sup> and political rights.<sup>287</sup> Likewise, the IAHR bodies have determined that stereotypes against vulnerable groups, such as women<sup>288</sup> or indigenous people,<sup>289</sup> constitute violations of the right to equality and non-discrimination, upheld in both the ACHR and the ADRDM. Thus, the Commission considers that the eradication of ageist stereotypes is part of its general protection of equality and non-discrimination. As regards the rights of the elderly, this protection entails the duty of the States to formulate programs with the participation of the elderly to raise the awareness of the population about the aging process.<sup>290</sup>

269. The Commission notes that there are material needs for older people to be able to exercise their right to community participation and integration. Specifically, and again due to bias based on old age, urban infrastructure, roads, recreational spaces, buildings, housing, sign posts, and other objects often prevent or are ill-suited to the movement of the elderly. Accordingly, in order

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<sup>283</sup> Classifications of the different forms of participation can be found in: a) "[Ejercer el derecho a la participación política en la vejez Reflexiones a 10 años de la Red Nacional de Personas Mayores \(Redam\) \(Exercising the right to political participation in old age Reflections 10 years after the National Network of Older Persons \(Redam\)\)](#)", Ministry of Social Development, National Institute of Older Persons, 2019 pp. 20-21 and b) Arias, C. D., Gamez, E., and Lecot, J. (2016). [El concepto de participación de los adultos mayores en los tratados internacionales y en los planes nacionales dirigidos a esta población de Argentina, Chile y Uruguay \(The concept of participation of older adults in international treaties and national plans for this population in Argentina, Chile, and Uruguay\)](#). Villa María: National University of Villa María.

<sup>284</sup> CPM, Article 12; ADRDM, Article XVI.

<sup>285</sup> CPM, Article 20; ADRDM, Article XII.

<sup>286</sup> CPM, Article 21; ADRDM, Article XIII.

<sup>287</sup> CPM, Article 27; ADRDM, Article XX.

<sup>288</sup>Cf. I/A Court H.R. Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 22, 2018. Series C No. 357, par. 172; I/A Court H.R., Case of Ochoa and family v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2021. Series C No. 447, par. 123.

<sup>289</sup>Cf. I/A Court H.R. Case of Norín Catrimán et al. (Leaders, Members, and Activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations, and Costs. Judgment of May 29, 2014. Series C No. 279, par. 222.

<sup>290</sup> CPM, Article 32; ADRDM, Article II.

for the right to free transit to be exercised by the elderly in a way that allows their participation and community integration, States need to guarantee their accessibility and personal mobility.<sup>291</sup> Based on the provisions of the CPM, the Commission considers that relevant measures that States should adopt include the identification and elimination of obstacles and barriers in areas such as buildings, public roads, transportation, and other outdoor and indoor facilities such as educational centers, housing, medical facilities and workplaces, as well as in information, communications, and other services, including electronic and emergency services.

## B. National policies and programs

270. Based on the information at its disposal, the Commission notes that several States are committed to implementing various across-the-board measures to guarantee community participation and integration, as well as programs to ensure the accessibility and inclusion of older persons. Regardless of their ratification or accession to the Convention on Older Persons, the IACHR notes that States are already implementing these human rights on behalf of older persons.
271. These measures and programs come in a variety of guises and instruments, as well as in general policies on older persons that include participation as one of their pillars. In this regard, the IACHR notes the existence of national policies and plans of action that include as part of their objectives the elimination of obstacles to the participation of older persons in all aspects of cultural, economic, and social life, and specifically establish a connection between physical accessibility and its adaptation to facilitate the participation of older persons, as is the case in Antigua and Barbuda, Argentina, Colombia, Costa Rica, Mexico, and Uruguay. In particular, the IACHR notes the Uruguayan experience, in which the elderly participate directly in the elaboration of these general policies.
272. In addition, older people participate in direct intervention programs by both national institutions and community organizations. Specifically, the IACHR notes that States have reported the existence of continuing education and training programs in Antigua and Barbuda and Chile; community centers in Bolivia; facilities for self-organization in El Salvador; the creation of facilities for developing dignified aging in Ecuador; networks of older persons' clubs in Jamaica, Mexico, and Uruguay; and comprehensive care centers for the elderly in Peru and Trinidad and Tobago. Likewise, the IACHR finds that States, such as Canada make funds available to local organizations competing for community projects to combat social isolation and advance intergenerational learning, or else provides subsidies for the hiring of senior citizens, as in Chile.
273. With respect to raising awareness and eradicating stereotypes based on age as a way to foster the integration of older persons into the community, some States reported policies to promote and draw attention to the participation of older persons in social life in volunteer programs pro-

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<sup>291</sup> CPM, Article 26; ADRDM, Article X.

moting a positive image of aging, as in Antigua and Barbuda. The IACHR also notes that Canada sponsors community-based programs to raise awareness of abuse of older persons.

274. In relation to the eradication of age-based stereotypes to improve community participation and integration, the IACHR notes that Argentina reported on the implementation of programs in the media to combat prejudices associated with aging, as well as on studies to draw attention to aged-based bias in the media. In Chile, volunteer programs for the elderly are implemented with a view to fostering a more positive image of aging. Intergenerational knowledge meetings are held in Peru and Trinidad and Tobago. The IACHR highlights the fact that in Trinidad and Tobago, persons aged 90 or more are singled out for celebration of their longevity.
275. In relation to accessibility to enable community participation and integration, the States reported on the implementation of programs to increase accessibility in urban and rural transportation and approval of technical building standards for accessibility as in Antigua and Barbuda, programs to develop sustainable cities as in Argentina, and digital accessibility programs as in Brazil.
276. Below, the IACHR will discuss policies and programs related to the right to participation and community integration as reported by the States. The information related to this section is systematized in Table 5: Right to participation and community integration and accessibility and personal mobility, and in greater detail in the Annex to this report.
277. In Antigua and Barbuda, the National Policy for Older Persons and its Plan of Action for Healthy Aging 2017-2027<sup>292</sup> primarily aims to remove barriers to participation and provide more opportunities for the continued participation of people as they age in all aspects of the cultural, economic, and social life of their communities according to their needs, preferences, and abilities. In order to empower older persons to fully integrate into society, Antigua and Barbuda reported having continuing education programs to promote their employability, inclusion in volunteer programs, and leadership training. It also indicated that it has programs to eradicate the exclusion of the elderly through the reevaluation of aging and by drawing attention to their participation in volunteer programs.
278. Regarding accessibility to enhance community participation and integration, Antigua and Barbuda informed the IACHR about its programs to increase the accessibility and affordability of public transportation services in rural and urban areas, including through the provision of State-run transportation services, so that older persons (especially those with reduced mobility) can fully participate in family and community life. It also informed that its Plan also aims to adopt construction codes to improve accessibility in buildings.

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<sup>292</sup> Antigua and Barbuda, [National Policy and Plan of Action on Healthy Ageing 2017- 2027](#)

279. For its part, Argentina reported on the "Experience Counts" initiatives, the National Program for Digital Inclusion and Access to New Technologies, the "Open Radio" project, and the Program for the Promotion of Fair Treatment, under the leadership of the National Directorate of Policies for Older Adults (DiNaPAM). Within the framework of the latter, the State indicated that the National Campaign for Fair Treatment of the Elderly (*Campaña Nacional del Buen trato hacia las Personas Mayores*) is conducted every year and invites people to review deep-rooted prejudices and stereotypes through graphics and audiovisual devices that seek to raise awareness of situations of abuse and mistreatment of the elderly and to promote the social construction of a culture of fair treatment. In this regard, the State underscored the role of its Ombudsperson's Office. One of the activities performed by this organization is to carry out analyses and reports on material related to the elderly on radio and television. Those reports have revealed scant attention to news related to the elderly and their representatives with respect to events involving the police and social security issues. They also highlighted some reporting and commentaries in the media that reinforce this limitation: the "universalization of grandparenthood," the absence of gender-sensitive and inclusive language, and the focusing of information on the needs and not on the rights of the elderly.
280. As regards accessibility, Argentina reported that the National Institute of Social Services for Retirees and Pensioners (INSSJP-PAMI) operates a Program for Cities and Communities Friendly to the Elderly. This project aims to support the development of age-friendly cities and communities in the context of an aging population while maximizing opportunities for inclusion for senior citizens at the local level by focusing on eight areas: transportation; housing; social participation; respect and social inclusion; civic participation and employment; communication and information; community and health services; and outdoor spaces and buildings.
281. For its part, Bolivia reported that the Autonomous Municipal Government of La Paz has been promoting the "Community Houses" project since 2007, following usually verification of the need to promote greater citizen participation of the elderly. According to the information provided, the Program seeks to establish opportunities that allow older persons to get together and organize, while promoting their reintegration into society and empowering them through the enhancement of their capabilities and knowledge of their rights. Regarding participation in the design of public policies and decision making, the State cited the participatory and inclusive General Law for the Elderly, No. 369 as an example. It also indicated that the 2019 Protocol for the Care and Protection of the Elderly established that the Unit for the Care and Protection of Older Adults (UPAM) should promote public policies to encourage the participation of the elderly in recreational, cultural, and sports activities.

282. Brazil reported that one of the objectives of the VIVER Active and Healthy Aging Program is to create opportunities for digital and social inclusion, ensuring the participation of the elderly so as to improve their quality of life.<sup>293</sup>
283. Canada's New Horizons for Seniors Program ("NHSP") helps seniors benefit from and contribute to the quality of life in their community through social participation and active living. NHSP funding focuses on community projects, pan-Canadian projects, and pilot projects addressing such issues as social isolation and intergenerational learning. Community-based projects involve seniors and address one or more of the five program objectives: volunteer work, mentoring, raising awareness of abuse of older persons, social participation, and funding (*asistencia de capital*). According to Canada, pan-Canadian projects help seniors and community members recognize elder abuse in all its forms and improve their quality of life and safety. The pilot projects provide support to help address the isolation of older people through improved social support networks and resources and community interventions. The State reported the existence of other intergenerational learning projects that help older people pursue their interests and share their knowledge and experiences with others.
284. Chile's Better Adults Plan (*Plan Adultos Mejores*)<sup>294</sup> has four main courses of action: Healthy, Safe, Participatory, and Institutional. The Participatory axis seeks to strengthen the autonomy of the elderly by facilitating their participation in the labor market through access to the training programs of the National Training and Employment Service (SENCE) and subsidizing their hiring. For its part, the Institutional axis aims to create a Citizen Council for the Elderly in the Office of the President of the Republic. Through the creation of the Citizen Council for the Elderly, the State indicated that it sought to garner the opinions of citizens, civil society actors, and the private sector that participate and work actively in society on behalf of the elderly so that they can collaborate in the implementation of the active aging plan. The National Service for Older Adults (SENAMA) establishes the promotion and support of community participation and integration rights through its Participation and Training program aimed at leaders and members of clubs, communal networks of clubs, or other senior citizen organizations. The State also highlighted the Country of the Elderly Volunteer Program (*Programa de Voluntariado País de Mayores*), which aims to contribute to social integration and bolster a positive image of the elderly, through the exercise of new roles, while promoting respect for their rights.
285. In Colombia, the overall framework for promoting the active participation of older persons is the Policy on Human Aging and Old Age 2015 - 2024, with an Action Plan organized around four core activities: 1) Promotion and guaranteeing of human rights; 2) Comprehensive Social Protection; 3) Active Aging; and 4) Human Talent Training. These core activities, and the corresponding courses of action, cover all the rights of the elderly and involve sectoral and inter-

<sup>293</sup> Secretaria Nacional de Promoção e Defesa dos Direitos da Pessoa Idosa, [Programa VIVER envelhecimento ativo e saudável](#), 2019

<sup>294</sup> SENAMA, Magazine N° 154, [Encouraging the participation and autonomy of older persons](#), 2018.



sectoral responses geared to the well-being of older persons. Although they are established thanks to participatory work legitimized at the national level, they need to be adapted by regional authorities (*las entidades territoriales*). The first core activity of the Policy fosters social participation of the elderly and the strengthening of their organizations. The Integrated Methodology of Social Participation of and for Older Adults (MIPSAM) was developed for that purpose and has served as a benchmark for adapting policy and action plans in the country's departments, districts, and municipalities. It covers seven areas: family, health, education, environment, use of free time (sports, physical activity), income generation, and participation. Then, within the basic basket of services established in Article 11 of Law 1276 of 2009, which is part of Core Activity 2, on comprehensive social protection for the elderly, a mandate is established regarding the development of intergenerational activities. That mandate is in harmony with the activities of the Family Support and Strengthening Policy, which aims to "recognize, promote, and strengthen the capacities of families as collective subjects of rights and protagonists of social development." The Core Activity with respect to active aging includes the National New Beginning Program, which aims to forge relationships in the quest for conditions and scenarios that not only expand access to activities, but also create enriched environments for the lives of the elderly and communities based on the generation of processes for the transformation of living conditions through recreation. The program is reportedly conceived as a strategy, within the framework of the National Recreation Plan, to stimulate the recovery of cultural and recreational knowledge from the various regions of the country. Likewise, as a process, it aims to reinstate older persons' capacity to participate and the possibility of generating grassroots participatory processes. while strengthening ties between the institutions that work for and with the elderly.<sup>295</sup>

286. Strategic Line III of Costa Rica's National Policy on Aging and Old Age refers to the social participation and intergenerational integration of older persons. It states that "[t]he elderly carry out activities of different kinds for their own benefit and that of the community, through their participation in organizations composed exclusively of older adults or intergenerational organizations and, in general, bring about positive changes in their living conditions and their empowerment as a social group. The aim is to strengthen opportunities and mechanisms for the social participation of older adults and to get other members of society to recognize the leading role that older adults have played vis-a-vis the State (...)."<sup>296</sup> The national policy establishes as a principle that the participation of older people in diverse social, economic, cultural, sporting, recreational. and voluntary activities enhances their well-being, and that older people's groups and organizations are an important means of facilitating participation by carrying out promotional activities and encouraging interaction between generations; and it recognizes that participation is a universal right.<sup>297</sup>

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<sup>295</sup> Ministry of Health and Social Protection, *National Policy on Aging and Old Age 2015 - 2024*, August 2015.

<sup>296</sup> Costa Rica, Reply to the Questionnaire. *National Policy on Aging and Old Age 2011-2021 (PNEV 2011-2021)*.

<sup>297</sup> Costa Rica, Reply to the Questionnaire. *National Policy on Aging and Old Age 2011-2021 (PNEV 2011-2021)*.

287. One policy established in Ecuador's National Agenda for Intergenerational Equality (ANII) is "to promote access to education and eliminate illiteracy among the elderly" and "to promote adequate, inclusive, and quality public spaces for the elderly." In addition, within the "My Best Years Mission" program, the government has established favorable environments and care services, which constitute opportunities for dignified aging, revitalization, recreation, socialization, and meeting. Reportedly, these are occasions designed for healthy older persons and those who can get around on their own to meet, participate, and socialize. In these environments, activities involving motor, cognitive, recreational, integration and interaction-oriented stimulation are carried out, aimed at strengthening coexistence, participation, solidarity, and ties with society and promoting active and healthy aging.<sup>298</sup>
288. Since 2012, in El Salvador, the Nuestros Mayores Derechos (Our Elderly Rights) Program has included awareness-raising programs and the creation and strengthening of facilities for participation, where the elderly can organize themselves and plan actions aimed at establishing social networks that link them to their family and community.<sup>299</sup>
289. Jamaica's Ministry of Labor and Social Security established a National Council for Senior Citizens to advise it on all matters relating to the welfare of the elderly and to implement the National Policy for Senior Citizens. The Council oversees programs and activities that promote active aging, intergenerational interaction, and the participation of the elderly. Among the participation policies, it supports and encourages the network of senior citizens' clubs throughout the country.
290. In Mexico, Priority Strategy 1.4. of the Institutional Program of the National Institute for the Elderly (INAPAM) 2021-2024<sup>300</sup> reads as follows: "Promote the participation of the elderly, specialists, and interested persons in the design, implementation, follow-up, and evaluation of public policies aimed at this segment of the population" and calls specifically for the following actions: "1.4.1. Incorporate citizen proposals regarding the elderly derived from the Citizens' Council; 1.4.2. Generate opportunities for the participation of the elderly for the dissemination, analysis, and drawing up of proposals for the exercise of their rights; and 1.4.3. Promote actions that provide for intergenerational relationships and cooperation, in order to encourage the active participation of the elderly in activities that strengthen the generation of solidarity support networks." INAPAM promotes a series of activities to foster the physical, human, and cultural development of older persons. For example, there are INAPAM Clubs nationwide, which are community spaces where people aged 60 and over meet and interact, as they offer a variety of educational, cultural, sports and social training and human development activities. They are

<sup>298</sup> Government of Ecuador, Technical Secretariat, *Plan Toda una Vida, Mission Mis Mejores Años*, 2018.

<sup>299</sup> Asociación de Gerontología de El Salvador (AGESALVA), Response to the Questionnaire, January 29, 2019.

<sup>300</sup> Secretaría de Gobernación [Ministry of the Interior] (SEGOB), *Programa Institucional del Instituto Nacional de las Personas Adultas Mayores (INAPAM) 2021-2024*, April 16, 2021.

governed by specific regulations, under which club members form self-managed groups, capable of making decisions and actively participating in the life of their community.

291. In Peru, Article 10 of Law 30.490 empowers the Ministry of Women and Vulnerable Populations (MIMP) to promote the creation of comprehensive care centers for older adults (CIAM) in local governments. The CIAM are facilities created by local governments for the participation and social, economic, and cultural integration of the elderly, through the provision of services in coordination with public or private institutions and programs and projects under their jurisdiction for the promotion and protection of their rights. The function of these centers is to promote the participation of the elderly in decision-making. Activities include productive and/or occupational workshops, recreational and leisure activities, self-esteem workshops, maintenance of mental functions, and prevention of chronic diseases. The Peruvian government has also launched a public policy called "Intervención Saberes Productivos" (Productive Knowledge Intervention), implemented in 511 local governments for the protection of the elderly, generating opportunities for participation that contribute to the construction of social support networks. In this context, intergenerational meetings are held where older people transmit their traditional knowledge to children and adolescents, thereby contributing to the transmission of culture from one generation to another.
292. Trinidad and Tobago's National Policy on Aging addresses participation, engagement, and social inclusion as one of twelve priority action areas.<sup>301</sup> There are several programs and activities that promote the participation of the elderly such as: (a) Senior Activity Centers, which are multi-service facilities targeting healthy and able-bodied individuals 55 years of age and older to enable them to participate in educational and recreational activities, aimed at supporting personal growth and independence; (b) the Geriatric Adolescent Partnership Programme, which imparts knowledge and promotes a sense of caring for the elderly in order to empower them to respond to the complex needs of older persons and enhance intergenerational relationships, while also helping to improve their quality of life; (c) the Retiree Adolescent Partnership Programme, which is a community-based initiative that seeks to provide assistance and supervision at the community level to at-risk youth through skills enhancement and training provided by retired seniors, giving seniors the opportunity to meaningfully utilize skills and bridge the generation gap; and d) Greetings to Nonagenarians and Centenarians, which is a program that conducts an ongoing survey of nonagenarians and centenarians in Trinidad and Tobago in order to introduce and draw attention to seniors, highlight their unique life perspectives, and recognize their contributions to social development.
293. In Uruguay, the 2005 law establishing the Ministry of Social Development (MIDES) includes the promotion of citizen participation to strengthen active citizenship of the elderly. Reportedly, it specifies that participation is a right and as such should be guaranteed by the State. It

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<sup>301</sup> Trinidad and Tobago, Ministry of Social Development and Family Services, [The Division of Ageing](#).

therefore attaches importance to the State's role in guaranteeing and strengthening spaces for participation, as well as its contribution to the construction of an organized civil society with a capacity for dialogue and putting forward proposals. Early on, in 2007, with the creation of the Area of Older Adults in the Ministry of Social Development (MIDES), it has focused on promoting the participation of older people as a key part of its work.

294. As an area of participation of the elderly, it is worth mentioning the National Network of Organizations of the Elderly (REDAM) of Uruguay, which brings together heterogeneous organizations focusing on the elderly from all over the country (groups of senior citizens, grandparents' clubs, associations of retirees and pensioners, Uni-3, nursing homes, women's organizations, and many others). Through the National Institute for the Elderly (INMAYORES), the Ministry of Social Development encourages the participation of the elderly in this group to help with the design (i.e., construction, planning, or projection) and monitoring (control, follow-up, evaluation) of the actions by the State in matters to do with aging and old age. In addition, the State provides technical assistance and logistical support (by financing transportation, lodging, and meeting room arrangements). In the course of their work, INMAYORES and REDAM discuss aging and old age with a view to forging a joint agenda to achieve recognition and ensure the exercise of the rights of older persons. The following types of events are held: periodic meetings in each department and/or locality, national plenary meetings, national meetings, regional meetings and activities such as Parliamentary Seniors for a Day. Another area of government that promotes the participation of the elderly is the National Program for the Elderly of the Ministry of Public Health, which aims to promote healthy active aging, which translates into a dignified, full, and participatory life, in which the elderly person remains in the community for as long as possible and in adequate health conditions.

#### 4.5. **Right of older persons to freedom of expression, opinion, and access to information**

295. With respect to the analysis of the exercise of these rights by older persons, the majority of States and civil society organizations did not respond to the *Questionnaire*, while in some cases general references were made to the right to freedom of expression enshrined in the respective constitutions. That being so, the preparation of this section takes into consideration the international standards of the IAHRs on freedom of expression, as well as the provisions formulated by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, among other sources of information cited therein.
296. The IACHR considers it important to refer to the right to freedom of expression in relation to the elderly, as an opportunity to draw attention to issues that biases based on age tend to hide. Accordingly, freedom of expression and access to information through digital systems and platforms are widespread and standardized. However, this standardization ignores the digital divides that are generated in the case of older persons and their ability to use these

new ways of accessing information. The IAHRs recognizes that freedom of expression is one of the pillars of the democratic States that make up the OAS.<sup>302</sup> Therefore, the failure to adopt measures to include older persons' access to new forms of exercising freedom of opinion and expression, as well as access to information, cannot be understood merely as an innocuous generation gap. Rather, it is the result of neglect of older persons based on their age.<sup>303</sup>

**A. International standards regarding freedom of expression, opinion, and access to information of older persons**

- 297.** The IACHR recalls that freedom of expression, in all its forms and manifestations, is a fundamental and inalienable right, inherent to all persons, and an indispensable requirement for the very existence of a democratic society.<sup>304</sup> Principle 2 of the IACHR Declaration of Principles on Freedom of Expression states that all persons should have equal opportunity to receive, seek, and impart information through any media without discrimination on any grounds whatsoever.<sup>305</sup> In this regard, States should adopt positive measures to ensure the effective exercise, without discrimination, of the right to freedom of expression by all individuals and groups in society, including older persons. This implies adopting measures to eradicate - which includes designing programs to counteract - historical discrimination, prejudice, and biased attitudes that impede the equal enjoyment of the right to freedom of expression by certain groups.<sup>306</sup>
- 298.** Regarding access to information, Principle 4 of the Declaration of Principles establishes that access to information held by the State is a fundamental right of individuals, and that States are obliged to guarantee the exercise of this right.<sup>307</sup> Bearing in mind the principle of maximum disclosure, States should guarantee to all persons, including the elderly, the widest possible and most effective access to public information, and exceptions should not

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<sup>302</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression, OAS Ser.L/V/II IACHR/RELE/INF., December 30, 2009, par. 8.

<sup>303</sup> IACHR. Press release No. 259/21: "[IACHR and RFOE Call on States to Adopt Measures to Reduce Digital Divide for Older People.](#)", October 1, 2021.

<sup>304</sup> IACHR. [Declaration of principles on freedom of expression.](#) October 20, 2000. Principle 1.

<sup>305</sup> IACHR, [Declaration of principles on freedom of expression.](#) October 20, 2000. Principle 2.

<sup>306</sup> United Nations Special Rapporteur on Freedom of Opinion and Expression, Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, and Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights. May 6, 2014. [Joint Declaration on Universality and the Right to Freedom of Expression.](#)

<sup>307</sup> IACHR. [Declaration of Principles on Freedom of Expression.](#) October 20, 2000. Principle 4.

become the general rule in practice.<sup>308</sup> In addition, the rules on exceptions must be interpreted narrowly. In doubtful cases, transparency and access should be preferred.<sup>309</sup>

- 299.** Regarding access to public information on violence and discrimination, the IACHR has established that it is essential that States continue to pursue initiatives to ensure that older women are aware of their rights and the ways to enforce them, as well as of the protection and comprehensive care mechanisms available and the ways to access them.<sup>310</sup> Along these lines, the IACHR has highlighted that the information produced by many States in the region on gender-based violence is still not disaggregated in such a way as to reveal its true dimension and the impact it has on especially vulnerable groups, such as older women.<sup>311</sup>
- 300.** On the other hand, with respect to the right to freedom of expression and social protest, the IACHR and its ROFE have indicated that, in order to guarantee the rights of the elderly in connection with demonstrations, States must pay special heed, in the design and implementation of police operations, to avoid the disproportionate and illegitimate ways in which the use of force may affect them. Accordingly, police action protocols and the implementation and control of operations must contain safeguards and provide for special measures to avoid discrimination and particular harm to older persons.<sup>312</sup>
- 301.** With regard to the use of the Internet, international standards point out that the exercise of freedom of expression requires a robust, universal digital infrastructure with regulations to guarantee that it remains a free, accessible, and open space. In this sense, international organizations for the protection of human rights have urged States to recognize access and use of the Internet as a human right and an essential condition for the exercise of the right to freedom of expression, and they should significantly expand the initiatives to provide universal and affordable access to the internet, bridging the digital divide.<sup>313</sup> Likewise, the principle of universal access to the Internet "refers to the need to ensure universal, ubiquitous, equitable, truly affordable and adequate quality connectivity and access to Internet infrastructure

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<sup>308</sup>IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Right of Access to Information in the Inter-American Legal Framework](#). OEA/Ser.L/V/II CIDH/RELE/ INF.1/ 09. December 30, 2009, par. 11.

<sup>309</sup>IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Right of Access to Information in the Inter-American Legal Framework](#). OEA/Ser.L/V/II CIDH/RELE/ INF.1/ 09. December 30, 2009, par. 10.

<sup>310</sup>IACHR. [Access to public information on violence and discrimination against women: progress and challenges in the Americas](#). 2018. par. 53.

<sup>311</sup>IACHR. [Access to public information on violence and discrimination against women: progress and challenges in the Americas](#). 2018. Par. 22.

<sup>312</sup> IACHR Office of the Special Rapporteur for Freedom of Expression, [Protest and Human Rights Standards on the rights involved in social protest and the obligations that should guide state response](#), OEA/Ser.L/V/II IACHR/RELE/INF.22/19, September 2019, par. 165.

<sup>313</sup> United Nations Special Rapporteur on Freedom of Opinion and Expression, Representative for Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the OAS, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights. July 10, 2019. [20th anniversary joint statement: challenges for freedom of expression in the next decade](#).

and ICT services throughout the territory of the State."<sup>314</sup> Therefore, States must adopt positive differentiation measures to allow the effective enjoyment of this right for individuals or communities that require it because they are marginalized or discriminated against.<sup>315</sup>

302. It is also necessary for older people to have the quality, information, and technical knowledge needed to access the Internet and make the most of it.<sup>316</sup> To this end, States should take "digital literacy" measures to promote the ability of all people to make autonomous, independent, and responsible use of the Internet and digital technologies, raising awareness of the appropriate use of the Internet and the benefits it can bring,<sup>317</sup> especially for the elderly. This is a process of fundamental importance in guaranteeing human rights and a particularly necessary measure to protect and guarantee the rights to equality and non-discrimination.<sup>318</sup>
303. As can be seen, international standards regarding freedom of expression have been adjusted by human rights protection bodies to meet the specific needs of certain groups in situations of vulnerability and historically discriminated against, such as older persons. Thus, the IACHR finds that the Convention on Older Persons includes several of the above standards that are mandatory for the States that are party to it and provides a useful parameter to guide the interpretation and application of other inter-American standards that address various facets of the right to freedom of expression<sup>319</sup> and also of the American Declaration itself<sup>320</sup> with respect to older persons.
304. In light of the above, the IACHR notes that the Convention on Older Persons establishes in Article 14 that older persons have the right to freedom of expression and opinion and access to information, on equal terms with other segments of the population and through the means of their choice. To ensure the exercise of this right, States Parties shall adopt measures designed to guarantee older persons the effective exercise of the above-mentioned rights. Likewise, regarding the interrelation between freedom of expression, access to information tech-

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<sup>314</sup>IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. IACHR/RELE/INF.11/13. December 31, 2013, par. 16.

<sup>315</sup>IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a free, open and inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/ INF.17/ 17. March 15, 2017, par. 7.

<sup>316</sup>IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a free, open, and inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/ INF.17/ 17. March 15, 2017, par. 41.

<sup>317</sup> United Nations Special Rapporteur on Freedom of Opinion and Expression, Representative for Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Special Rapporteur for Freedom of Expression of the Organization of American States (OAS), and Special Rapporteur for Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR). June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

<sup>318</sup>IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/ INF.17/ 17. March 15, 2017. Par. 43.

<sup>319</sup> ACHR, Article 13; Convention of Belém do Pará, Article 8. g

<sup>320</sup> ADRDM, Article IV.

nologies, and the digital divide, the CPM provides for the obligation to "[p]romote education and training for older persons in the use of new information and communication technologies (ICTs) in order to bridge the digital, generational, and geographical divide and to increase social and community integration." Likewise, the CPM also relates freedom of expression with the right to community participation and integration as part of the duty to "promote education and training for older persons at the lowest possible cost, in the use of new information and communication technologies, including the Internet."<sup>321</sup>

## B. National policies and programs

305. Based on the information provided and information in the public domain, the IACHR will place on record the general regulations implemented by States regarding the recognition of the needs of the elderly with respect to the digital divide and access to new information technologies. Likewise, the IACHR has ascertained the existence of more operational technical standards to improve accessibility to public information.
306. Based on the information reported, the IACHR notes that some States have adopted national laws that recognize the rights of older persons to information and communications technologies. Thus, the Commission observes specialized regulations in Argentina, "Ley Digital of 2014"; Bolivia (General Law No. 164 of 2011, on telecommunications and information and communications technologies); Brazil (Ordinance No.16 of 2012); Colombia (Law No. 1221 of 2008 establishing the rules for the promotion and regulation of teleworking and other provisions); and in Costa Rica (General Telecommunications Law No. 8642).<sup>322</sup>
307. In this regard, the IACHR notes the case of Mexico, which in 2016 approved, through its National Institute for Transparency, Access to Information, and Protection of Personal Data, a set of criteria to ensure accessibility conditions that allow vulnerable groups, such as the elderly, to exercise the human rights of access to information and protection of personal data. In light of these criteria, State institutions "shall promote and implement actions intended to guarantee accessibility conditions so that vulnerable groups may exercise, under equal conditions and free from any discrimination, the human rights of access to information and personal data protection." To this end, they should take steps aimed at eliminating

<sup>321</sup> Preceding the Convention on Older Persons on the right to access ICTs is the [San José Charter on the Rights of Older Persons in Latin America and the Caribbean](#), adopted by government representatives at the Third Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean on May 8 to 11, 2012, which recommends promoting "actions to ensure access of older persons to information and communication technologies, in order to reduce the technological gap," as a way to enhance older persons' enjoyment of the right to education.

<sup>322</sup> G. Sunkel and H. Ullmann, [Older adults in the digital age in Latin America: bridging the digital age divide](#), ECLAC Review No. 127, April 2019, p. 260.



“any physical, communication, regulative or other gaps that may hinder the full exercise of the aforementioned human rights.”<sup>323</sup>

308. With the aim of reducing the digital divide, several States have developed national digital plans and agendas in which specific mention is made of older persons. Based on information in the public domain, in Costa Rica the IACHR identifies the National Telecommunications Development Plan 2015-2021”Costa Rica: Una sociedad conectada” (Costa Rica: A Connected Society); in Guatemala, the National Agenda of the Information and Knowledge Society; in Honduras, the Honduras Digital Agenda 2014- 2018: connectivity, transparency, and efficiency; in Mexico, the National Digital Strategy, 2013-2018; and, in Peru, the Plan for the Development of the Information and Knowledge Society in Peru - Digital Agenda 2.0.<sup>324</sup>

309. Finally, with respect to physical and material accessibility for the digital inclusion of older persons,<sup>325</sup> the IACHR has been able to identify, based on public information, a number of programs aimed at closing the digital divide: in Argentina, the Postas Digitales Program and the UPAMI Program (Universidad para Adultos Mayores Integrados); in Costa Rica, the ED-1498 Project: digital technologies for older adults within the framework of the Advanced Educational Technologies Program (PROTEA); in Chile, the Chile Mayor Digit@l 2.0 program; in Mexico, digital education courses provided by the Universidad Autónoma de Nueva León; and in Uruguay, the Ibirapitá Plan.

#### 4.6. Rights of older persons to food, water, sanitation, and housing

310. In this section, the IACHR addresses standards related to the rights of older persons to food, water, sanitation, and housing. Thus, the Commission describes the general provisions contained in international legal instruments, as well as the main pronouncements of the IAHR bodies and other international human rights protection bodies. Thus, the IACHR finds that the protections of these rights refer directly to adequate food for the elderly, their protection from forced evictions, and access to water and sanitation so that they can lead a dignified life. Next, without prejudice to what has already been reported in other sections of this report, the IACHR presents some examples of policies, plans, and programs pursued by States specifically with respect to those rights.

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<sup>323</sup> IACHR. [Access to public information on violence and discrimination against women: progress and challenges in the Americas](#). 2018. par. 5.

<sup>324</sup> G. Sunkel and H. Ullmann, [Older adults in the digital age in Latin America: bridging the digital age divide](#), CEPAL Review No. 127, April 2019, pp. 260-261.

<sup>325</sup> G. Sunkel and H. Ullmann, [Older adults in the digital age in Latin America: bridging the digital age divide](#), CEPAL Review No. 127, April 2019, p. 261.

## A. International standards regarding the rights of older persons to food, water, sanitation, and housing

- 311.** The rights to food, water, sanitation, and housing mentioned in this section form part of economic, social, cultural and environmental rights ("ESCR").<sup>326</sup> According to the IACHR's Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (hereinafter "REDESCA"), ESCER encompass the right to work; fair, equitable and satisfactory working conditions; trade union rights; right to social security; right to health; right to food; right to education; right to the benefits of culture; as well as other rights.<sup>327</sup> However, the parameters governing the application of economic, social, cultural, and environmental rights have been developed over time by the bodies of the IAHRs, demonstrating a positive and growing synergy between the Inter-American Commission and Court in the protection of those rights. In particular, the Commission and REDESCA note that such rights have historically been incorporated in the evaluation, promotion, and protection of human rights by the IACHR through its various mechanisms.<sup>328</sup>
- 312.** Likewise, in its analysis of violations of ESCER, the IACHR has ascertained at least the following immediate and enforceable obligations related to their protection: i) general obligations to respect and guarantee them, ii) application of the principle of non-discrimination to economic, social, cultural, and environmental rights, iii) obligations to take steps or adopt measures to achieve the enjoyment of ESCER and iv) the provision of suitable and effective remedies for their protection.<sup>329</sup> For its part, Article 12 of the CPM on the rights of older persons establishes that long-term care services establishes that "Older persons have the right to a comprehensive system of care that protects and promotes their health, provides social services coverage, food and nutrition security, water, clothing, and housing, and promotes the ability of older persons to stay in their own home and maintain their independence and autonomy." Accordingly, the IACHR considers that access to this coverage should be immediate and enforceable in accordance with the obligations indicated at the beginning of this paragraph.
- 313.** The IACHR finds that in addition to the ESCER mentioned above, the IAHRs addresses jurisprudential and interpretative aspects of other rights such as, for example, the right to water and sanitation. Accordingly, the IACHR will now briefly refer to the content of the rights of older persons to food, water, sanitation, and housing.

<sup>326</sup>REDESCA of the IACHR, [Compendium on Economic, Social, Cultural, and Environmental Rights, Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021 , par. 22.

<sup>327</sup> REDESCA of the IACHR, [Compendium on Economic, Social, Cultural and Environmental Rights, Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021 , par. 33.

<sup>328</sup> REDESCA of the IACHR, [Compendium on Economic, Social, Cultural and Environmental Rights, Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021 , par. 37.

<sup>329</sup> REDESCA of the IACHR, [Compendium on Economic, Social, Cultural and Environmental Rights, Inter-American Standards](#), OEA/Ser.L/V/II. Doc. 465, December 31, 2021 , par. 45.

- **The human right of older persons to water and sanitation**

314. The human right to water and sanitation were recognized by [Resolution 64/292](#) of the United Nations General Assembly on July 28, 2010, as vital for the realization of all human rights.<sup>330</sup> Likewise, in 2002, the Committee on ESC rights adopted [General Comment No. 15](#) on the right to water based on the right to an adequate standard of living (Article 11) and the right to health (Article 12)<sup>331</sup> of the ICESCR, given that, in its view, water clearly falls into the category of guarantees needed to ensure an adequate standard of living, particularly because it is one of the fundamental conditions for survival and life with dignity.<sup>332</sup> In its General Comment, the Committee on ESC rights also defines the right to water as the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.
315. In the framework of the IAHRs, the Commission has addressed the content of the right to water particularly through its monitoring instruments, and albeit with less intensity, also through the cases and precautionary measures system.<sup>333</sup> Thus, the IACHR has held that all of its instruments recognize a series of rights that are closely linked to access to water and its different dimensions, such as availability, quality, and accessibility of water without discrimination of any kind. Specifically, it has considered that although the American Declaration does not expressly recognize the right to water, it establishes the right to life, to personal integrity, and the right of every person to have his or her health preserved by sanitary and social measures relating to food, clothing, and housing.<sup>334</sup>
316. Article 25 of the Convention on Older Persons establishes that "Older persons have the right to live in a healthy environment with access to basic public services. To that end, States Parties shall adopt appropriate measures to safeguard and promote the exercise of this right, *inter alia*: a) *To foster the development of older persons to their full potential in harmony with nature; b) To ensure access for older persons, on an equal basis with others, to basic public drinking water and sanitation services, among others.*" Regarding the specific situation of older persons with respect to access to drinking water and sanitation in

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<sup>330</sup> United Nations, General Assembly [Resolution 64/292. The human right to water and sanitation](#). Adopted by General Assembly General on July 28, 2010:

<sup>331</sup> ICESCR, Articles 11 and 12.

<sup>332</sup> Committee on Economic, Social, and Cultural Rights, Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, [General Comment No.15 \(2002\) The right to water \(Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights\)](#) 29th session Geneva, November 11-29, 2002

<sup>333</sup>See: Precautionary Measure No. 708-19. Inhabitants of the areas near the Santiago River regarding Mexico (February 15, 2020), Precautionary Measure No. 772-17. Pobladores consumidores de agua del Río Mezapa respecto de Honduras (February 24, 2018), Precautionary Measure No. 772-17. Villagers consuming water from the Mezapa River with respect to Honduras (February 24, 2018).

<sup>334</sup> Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region OEA/Ser.L/V/II. Doc. 176, September 29, 2019 , par. 281.

their homes and dwellings, available information from the 2010s reveals that around 20% of the elderly in the region did not have access to drinking water in their homes.<sup>335</sup>

- **Right to food and housing and the situation of older persons**

317. In regulatory terms, the rights to food and housing have been upheld in the ADRDM as elements that define well-being,<sup>336</sup> and also by the Protocol of San Salvador. In Article 12.1, the PPS specifically refers to the right to adequate nutrition and establishes that “[E]veryone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.”<sup>337</sup> Article 34 of the Charter of the Organization of American States refers to efforts to achieve adequate housing for all segments of the population.
318. Likewise, as already indicated in this report, in the case of the Yakye Axa indigenous community v. Paraguay,<sup>338</sup> reference is made to the international responsibility of the State for not having guaranteed the ancestral property rights of the Yakye Axa Community, causing multiple harm to its members. In this case, the I/A Court H.R. states that “As regards the special consideration required by the elderly, it is important for the State to take measures to ensure their continuing functionality and autonomy, guaranteeing their right to adequate food, access to clean water and health care.”<sup>339</sup>
319. Along these lines, the Inter-American Court has also established that the right to food should not be understood in a restrictive manner only as protection for mere physical subsistence, but as also having cultural dimensions of importance for some groups, such as ethnic groups, since the Court considers that not just any food satisfies the right to food. It must also be acceptable to a particular culture, i.e., take into account values unrelated to nutrition. Food, in turn, is indispensable for the enjoyment of other rights, and its “adequacy” may depend on environmental and cultural factors.<sup>340</sup> The IACHR finds that these requirements, formulated in the case of indigenous peoples and Afro-descendants, are also applicable to food for older persons under full-time care.

<sup>335</sup>S. Huenchuan (ed.), *Envejecimiento, personas mayores y Agenda 2030 para el Desarrollo Sostenible: perspectiva regional y de derechos humanos*, Libros de la CEPAL, N° 154 (LC/PUB.2018/24-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2018, pp.75-77.

<sup>336</sup> ADRDM, Article XI. “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”

<sup>337</sup> PSS, Article 12.

<sup>338</sup> I/A Court H.R., *Case of the Yakye Axa indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, Article 175

<sup>339</sup> I/A Court H.R., *Inter American Court of Human Rights, Case Law Bulletin No. 22: Economic, Social, Cultural and Environmental Rights*.

<sup>340</sup> Report on the Economic, Social, Cultural, and Environmental Rights of People of African Descent, OEA/Ser.L/V/II. Doc. 109, March 16, 2021, par. 188.

320. With respect to the right to housing, the IACHR has addressed it from various angles: in relation to the right to property of indigenous peoples, with respect to persons in a situation of mobility, and with respect to the measures to be adopted in the context of forced evictions. In this regard, the IACHR has observed that evictions affect the most vulnerable people and exacerbate inequality, social conflicts, segregation, and the creation of ghettos. Forced evictions are often linked to the lack of legal certainty regarding ownership of land, which is an essential element of the right to adequate housing.<sup>341</sup> The IACHR finds that these requirements formulated in specific cases on evictions in the region are applicable to the housing rights of the elderly and their risk of being victims of forced evictions.
321. For its part, the ICESCR refers to the right to adequate food, clothing, and housing in Article 11.1, which states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." In this regard, the Committee on ESC rights affirms that the right to adequate food is inextricably linked to the inherent dignity of the human person and is indispensable for the enjoyment of other human rights, being inseparable from social justice, as it requires the adoption of appropriate economic, environmental, and social policies, at the national and international levels, aimed at the eradication of poverty and the enjoyment of all human rights by all.<sup>342</sup>
322. The Convention on Older Persons addresses the relationship between the rights to food and housing and the situation of older persons. Thus, Article 24 of the CPM specifically refers to the right to housing and establishes that older persons have the right to decent and adequate housing, and to live in safe, healthy, accessible environments that are adaptable to their preferences and needs. To this end, States Parties shall take appropriate measures to promote the full enjoyment of this right and to facilitate older persons' access to integrated social, health, and home care services that enable them to reside in their own home in accordance with their wishes.
323. In Article 24, the CPM also establishes that States Party "shall ensure the right of older persons to decent and adequate housing and shall adopt policies to promote the right to housing and access to land, recognizing the needs of older persons and the priority of allocating to those in situations of vulnerability." In this line, the norm provides that States "shall progressively foster access to home loans and other forms of financing without discrimination, promoting, inter alia, collaboration with the private sector, civil society and other social actors. Such policies should pay particular attention to: a) *The need to build or*

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<sup>341</sup> Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 12.

<sup>342</sup> CESCR, General Comment No. 12, The right to adequate food (Article 11), E/C.12/1999/5, 12 May 1999, para. 4.

*progressively adapt housing solutions, so that they are architecturally suitable and accessible for older persons with disabilities and restricted mobility; b) The specific needs of older persons, particularly those who live alone, by means of rent subsidies, support for housing renovations, and other pertinent measures, within the capacities of States Parties.*

324. In relation to the right to housing, the Convention establishes that States Parties shall promote the establishment of expeditious procedures for complaints and justice in the case of evictions of elderly persons and shall take the necessary measures to protect them against unlawful forced evictions. States Parties should also promote programs for the prevention of accidents in an older person's environment and home.
325. For its part, Article 30 of the Convention provides, with regard to progressive fostering of access to home loans or other forms of financing free from discrimination that “Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of older persons to own or inherit property, to control their own financial affairs, and to have equal access to bank loans, mortgages, and other forms of financial credit, and shall ensure that older persons are not arbitrarily deprived of their property.”

#### **B. National policies and programs related to the rights to water and sanitation, food, and housing**

326. Next, the IACHR provides information related to the exercise of the rights to water and sanitation, food, and housing through plans and programs developed by the States. Notwithstanding the above, given the close connection between these ESCR and other rights already analyzed in this report, such as the right to independence and autonomy, the right to health, and the right to social security, the information presented is only illustrative and is not intended to further complicate the analysis of systems as complex as protection systems. Accordingly, the Commission highlights and illustrates regional trends in this area.
327. Thus, the Commission finds that the right to food and housing has been linked to the protections for older persons and has been regulated by Argentina, Bolivia, Brazil, the Dominican Republic, Ecuador, Guatemala, Jamaica, Mexico, Panama, Paraguay, Peru, and Uruguay. Regarding the development of specific programs, the IACHR notes that Colombia grants specific subsidies for food and housing; Costa Rica promotes access to home loans for the elderly; Ecuador, El Salvador, Jamaica, and Guatemala have programs for nutritional improvement and safe and accessible housing for the elderly.
328. Below, the IACHR will detail the policies and programs regarding the rights to water and sanitation, food, and housing, as reported by the States. The information related to this section is systematized in Table 6: right to food, water, sanitation and housing and in a more developed way in the Annex to this report.

329. The objective of the "Older Colombia" Social Protection Program for the Elderly is to increase protection for older persons who are neglected, do not have a pension, are destitute, or live in extreme poverty. Basic Social Services are one way to deliver indirect economic subsidies and include food, housing, and sanitation, medicines or technical aids.
330. Course of action No. 8 of Strategic Line 4 of the National Policy on Ageing and Old Age 2011-2021 (PNEV 2011-2021) of Costa Rica establishes: "Promote the development of intensive programs for decent and affordable housing" and in line 9: "Strengthen initiatives that enable older adults to access financing to acquire a home or adapt their own home to their new needs for habitability and security."
331. In Ecuador, the National Agenda for Intergenerational Equality (ANII) includes the reduction of malnutrition and the promotion of healthy practices among the elderly by combating malnutrition, eradicating undernourishment, and promoting healthy living habits and practices, and generating co-responsibility mechanisms between all levels of government, citizens, the private sector, and participants in the popular and solidarity-based economy, as part of a food security and sovereignty approach. ANII's policy also includes facilitating older persons' access to safe, accessible housing with decent services by strengthening social inclusion and equity systems, comprehensive protection, special protection, comprehensive care, and the life-cycle care system, with emphasis on priority groups, taking into account territorial contexts and sociocultural diversity.
332. Line of action 5.3.9. of El Salvador's Public Policy for Older Adults <sup>343</sup> establishes: "Seek to implement nutritional improvement programs" through the following activities: a) Design and implement a nutritional and hygiene support plan for older adults residing in non-profit foster homes, as well as for those who are assisted in emergencies; b) promote the implementation and improvement of family and community orchard projects; c) promote the implementation of training and awareness regarding food and nutrition of older persons, especially in foster homes and residences; d) promote the management of nutritional workshops for older adults, in particular those who are frail, disabled, or dependent; e) draw up guides, manuals, recipe books, research findings, and documents related to the nutritional needs of older adults; f) implement awareness days, with key actors and society in general, on nutritional aspects and oral hygiene for older adults, especially those who are frail or dependent.
333. El Salvador also reported that line of action 5.8.4. of its policy states "Promote actions to improve the environment for older persons", and calls for activities that promote the conditions needed to ensure access to drinking water and basic services, especially for homes and foster homes for the elderly. With respect to housing, line of action 5.7.6. reads: "Pro-

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<sup>343</sup> Government of El Salvador, Consejo Nacional de Atención Integral a los Programas de los Adultos Mayores (CONAIPAM), [Política Pública de la Persona Adulta Mayor](#), October 2017.

mote the creation of lines of credit on favorable terms, with special emphasis on the establishment of businesses, and the acquisition or improvement of housing for the elderly."

- 334.** Jamaica reported that there is no specific legal right to food, water, sanitation, and housing. However, Jamaica has had a National Policy for Senior Citizens since 1997, reflecting the State's commitment to coordinate government policy in such a way as to ensure the well-being of older persons in line with international standards, including access to food, water, shelter, clothing, and medical care.
- 335.** Guatemala's National Food and Nutritional Security System Policy (POLSAN), in the cross-cutting section entitled "Prioritizing the vulnerable population", paragraph e), establishes that older persons constitute a priority segment of the population.

#### **4.7 Older persons' right to social security**

- 336.** In this section, the IACHR addresses the principal features of older persons' right to social security as sets forth in conventions and customary law. Accordingly, the Commission places on record the content of the right to social security as a protection in contingencies related to aging, its relationship with the right to health and access to non-contributory pensions; as well as the intersectional nature of the need for social coverage in the case of older women and older persons with disabilities. The Commission will then report on the plans and programs offered by States to ensure the exercise of the human right to social security, with emphasis on access to non-contributory pensions for older persons.

##### **A. International standards regarding older persons' right to social security**

- 337.** The right to social security is one of the most deep-seated rights in international human rights protection systems,<sup>344</sup> so much so that it is upheld in various treaties<sup>345</sup> and international instruments, including the ADRDM<sup>346</sup> and the UDHR.<sup>347</sup> Accordingly, the Commission considers that the right to social security is an international legal norm enshrined in conventional and customary law, and that it contains a particular emphasis on protection during old age.

<sup>344</sup>I/A Court H.R. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375, paragraph 184.

<sup>345</sup> ACHR, Article 26; PSS, Article 9; CPM, Article 17; ICESCR, Article 9; CEDAW, Article 11.1, e); among others.

<sup>346</sup> ADRDM, Article XVI. "Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living."

<sup>347</sup> DUDH, Article 22. "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."; Article 25.1 "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."



338. The Commission has recognized that the commitments of the States in the area of social security can be found in the OAS Charter itself. Thus, in addressing the right to social security upheld in Article 26 of the ACHR, the IACHR has stressed that the right to social security derives from Article 45, paragraphs (b) and (h) of the OAS Charter, which respectively establish the right to protection against unexpected occurrences or social risks related to work and the need to pursue an efficient social security policy. For its part, Article 46 refers more broadly to the task of harmonizing on social security standards across the region.<sup>348</sup> For its part, the I/A Court of H.R. has indicated that social security "is a right that seeks to protect the individual from future contingencies that, should they occur, would have harmful consequences for that person; therefore, measures must be taken to protect them".<sup>349</sup>
339. In line with the above, the IACHR has indicated that "The starting point for social security legislation is the concept of contingency. This refers to a future event or situation, which, should it occur, will have harmful effect on the individual." It is therefore an event that is future and uncertain –but which has a high probability of occurring– that makes it necessary to protect the individual, or a group of individuals, from such an eventuality".<sup>350</sup>
340. Likewise, the I/A Court H.R has recognized that "the right to social security aims to protect an individual from situations that will arise when they reach a certain age and are physically or mentally unable to obtain the necessary means of subsistence for an adequate standard of living, which in turn could deprive him of his ability to fully exercise the rest of his rights. This aspect also concerns one of the constituent elements of the right, because social security must be implemented in a way that guarantees conditions that ensure life, health and a decent economic status."<sup>351</sup>
341. The IACHR notes that the Inter-American system has recognized special intersectional protections for older persons with disabilities and for older women in their access to social security. In this regard, the Inter-American Court has stated that "(...) the failure to implement the right to social security for more than 27 years seriously prejudiced the quality of life and health care coverage of Mr. Muelle, a person in a situation requiring special protection because he was an older person with a disability." The violation resulting from the failure to pay his pension exceeded a reasonable time and, as this was the victim's only income, the prolonged absence of the payments inevitably resulted in financial hardship that affected his abil-

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<sup>348</sup>IACHR. [Report No. 107/18.Case 13.039.Merits, Martina Rebecca Vera Rojas](#). Chile. October 5, 2018, par. 60.

<sup>349</sup>I/A Court H.R. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 06, 2019. Series C No. 375, paragraph 183.

<sup>350</sup> IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, OEA/Ser.LV/II.132 DOC 14 rev. 1, July 19, 2008, par. 82.

<sup>351</sup>I/A Court H.R. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375, paragraph 183.

ity to pay for his basic necessities and, consequently, affected his mental and moral integrity, as well as his dignity."<sup>352</sup> Likewise, with respect to older women, the IACHR finds that the CEDAW protects older women against discrimination in their access to social security.<sup>353</sup>

- 342.** In relation to the right to health, the IACHR has indicated<sup>354</sup> that the elimination, reduction, or suspension of benefits to which one is entitled must be limited, based on reasonable grounds and provided for in national legislation.<sup>355</sup> Moreover, the State retains responsibility for regulating and overseeing the social security system when third parties manage insurance plans, and for taking reasonable steps to ensure that private sector agents do not violate this right, including the establishment of a legislative framework, independent monitoring, genuine public participation, and the imposition of penalties for non-compliance.<sup>356</sup> Likewise, the IACHR recognizes that social security from a health perspective increases utilization of, and promotes equity in access to, health facilities, goods, and services, and affords higher levels of financial protection for those who are normally excluded. Thus, in order for public or private social health insurance programs to have a right-to-health approach, their design and scope need to take into account not only the financial capacity and employment status of target populations, but also the specific health needs of those whom they benefit.<sup>357</sup>
- 343.** In line with the above, the Commission has pointed out that "[d]ue to the redistributive nature of social security, this right plays a key role and is an essential instrument for fighting poverty and social inequalities, thus it should not be seen solely from an economic perspective, but also be mindful of a rights-based approach. In particular, the IACHR notes that for social security to be accessible, existing coverage must include those persons in the most vulnerable and impoverished situations, thus States must adopt plans that include them (...)"<sup>358</sup>
- 344.** Social security protection in old age has, however, developed significantly in international law, establishing the obligation of States to ensure access to contributory and non-contribu-

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<sup>352</sup> Cf. I/A Court H.R. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 06, 2019. Series C No. 375, par. 207.

<sup>353</sup> CEDAW, Article 11: "1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (...) e) The right to social security, particularly in cases of retirement, unemployment, illness, disability, old age or other incapacity to work, as well as the right to paid vacations; (...)"

<sup>354</sup> IACHR. [Report No. 107/18, Case 13.039, Merits, Martina Rebecca Vera Rojas](#). Chile. October 5, 2018, par. 65.

<sup>355</sup> Committee on Economic, Social and Cultural Rights, General Comment 19, E/C.12/GC/19, 4 February 2008. Paras. 23-28.

<sup>356</sup> Committee on Economic, Social and Cultural Rights, General Comment 19, E/C.12/GC/19, 4 February 2008. Para. 46.

<sup>357</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, United Nations. Doc. A/67/302, 13 August 2012, par. 42-45

<sup>358</sup> IACHR, [Opario Lemoth Morris et al. \(Buzos miskitos\) \(Case 12.378\) v. Honduras](#). OEA/Ser.L/V/II.168. Doc. 74, May 8, 2018. p. 267.

tory old age benefits. Thus, Article 25 of ILO Convention 102,<sup>359</sup> establishes the obligation of the State to guarantee access to old age benefits for persons protected by the Convention. For its part, Article 26 provides as follows: (...)“ 1. The contingency covered shall be survival beyond a prescribed age; 2. The prescribed age shall not exceed 65 years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned.”(...)

345. In line with the above, the Committee on ESC rights states in its General Comment No.6 that it is the obligation of States to take appropriate measures to establish, as a general rule, compulsory old-age insurance systems, to be paid from a certain age, as prescribed by national legislation,<sup>360</sup> as well as non-contributory old-age benefits or other assistance, for all older persons who, on reaching the age prescribed by national legislation, are not entitled (because they have not worked or have not completed the required minimum contribution periods) to an old-age pension or other social security benefits and have no other source of income.<sup>361</sup> Likewise, in its General Comment No. 19, the Committee on ESC rights establishes old age as an area that should be covered by social security and reiterates the obligation of States to establish social security schemes that, as of a certain age stipulated in each legislation, provide benefits to older persons.<sup>362</sup>
346. Finally, Article 17 of the Convention on Older Persons states that every older person has the right to social security that helps him/her lead a dignified life. Accordingly, States should progressively aim, within available resources, for the elderly to receive enough income for them to lead a dignified life through social security systems and other flexible social protection mechanisms. Article 17 also recognizes and protects the right to social security of elderly migrants by establishing the obligation of States to facilitate, through institutional agreements, bilateral agreements, or other hemispheric mechanisms, the recognition of benefits, social security contributions, or pension rights for elderly migrants.

## B. National policies and programs

347. According to the information submitted to the IACHR, with respect to access to non-contributory pensions the right to social security is fairly widely guaranteed in the States of the region. In this regard, the information reported on social security for the elderly mainly fo-

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<sup>359</sup> Part V. Old Age Benefits, International Labour Organization, C102 - [Social Security \(Minimum Standards\) Convention](#), 1952.

<sup>360</sup> United Nations, Committee on Economic, Social and Cultural Rights (CESCR), [The Economic, Social, and Cultural Rights of Older Persons: General Comment No.6](#), 8 December 1995, para. 27.

<sup>361</sup> United Nations, Committee on Economic, Social and Cultural Rights (CESCR), [The Economic, Social, and Cultural Rights of Older Persons: General Comment No.6](#), 8 December 1995, para. 30.

<sup>362</sup> United Nations, Committee on Economic, Social, and Cultural Rights (CESCR), [The Right to Social Security: General Comment No.19](#), 4 February 2008, para. 2.

cuses on the provision of economic resources for subsistence, although it also includes some food, lodging, health care, medicines, prostheses, and other items.

348. With regard to non-contributory pensions for the elderly, the IACHR notes that there are States that guarantee a universal pension for any older person who reaches a certain age and has no other type of income, as is the case of Argentina, Chile, Bolivia, Colombia, Costa Rica, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago. Venezuelan civil society reported the existence of a non-contributory pension program, but in recent years a large number of beneficiaries have stopped participating in the program.
349. The IACHR notes differences in the names used to refer to subsistence pensions. In some cases, States have reported using such terms as "cash transfers" as in the case of Ecuador and Jamaica, or "conditional cash transfer" program in Peru. Regardless of the term used, the Commission considers that social security must be sufficient for subsistence and a dignified life.
350. There are also States such as Chile, which also provides supplementary non-contributory pensions for those who receive low pensions, or Colombia, which provides products in the form of subsidies that include food, lodging, and health care, medicines or technical aids, prostheses or braces.
351. Based on the information reported, the amount of non-contributory pensions varies considerably. Pensions can range from USD 50.00 to USD 100.00 as in Ecuador, or reach 80% of the minimum pension. In any case, the IACHR finds that however much the pension varies, the international obligation requires that it must suffice for the subsistence of the older person, in addition to any supplementary protections that may be provided for them, and that pensions tend to vary depending on inflation.
352. Below, the IACHR will describe the social security policies and programs reported by the States. The information related to this section is systematized in Table 7: social security, and in greater detail in the Annex to this report.
353. Pension coverage in Argentina reaches 97% of the elderly, according to the National Social Security Administration (ANSES). This means that almost all older persons in Argentina participate in a contributory or non-contributory retirement and/or pension scheme in old age which, in addition to guaranteeing an income, provides medical coverage based on the social security system. The high level of pension coverage is the result of the implementation of pension moratoriums that allowed the inclusion, through retirement, of elderly people who had worked but had not made contributions. The pension moratorium was replaced by the establishment of a universal pension for people over 65 years of age who

had not paid all their contributions to the pension system thanks to Law 27.260 on Historical Reparation for Retirees and Pensioners,<sup>363</sup> which establishes, in addition to the regularization of pension lawsuits and the updating of pensioners' and retirees' assets, the Universal Pension for the Elderly (PUAM).<sup>364</sup>

354. Based on the above, the PUAM is a lifetime non-contributory benefit for people 65 years of age or older who are not beneficiaries of retirement, pension or post-retirement funds, and who meet the requirements established by law. The amount is equivalent to 80% of the minimum retirement pension and will be updated each time it increases in accordance with the Mobility Law. According to the information provided, beneficiaries are entitled to IN-SSJP-PAMI services (social and health care coverage) and have access to the same family allowances as contributory retirees: per child, per disabled child, spouse, etc.<sup>365</sup>
355. The Bolivian Integral Pension System comprises: 1) the Contributory Plan, which includes the Old Age Benefit, Disability Benefit, Death Pensions and funeral expenses, 2) the Semi-Contributory Plan, which includes the Old Age Solidarity Benefit, Death Pensions, and funeral expenses, 3) the Non-Contributory Plan, which includes the Universal Old Age Pension (Dignity Pension) and funeral expenses. The Universal Old Age Pension, within the non-contributory Social Security System, is a lifetime benefit granted by the State to all Bolivians aged 60 and over who do not receive an income from the Social Security System. Those who receive an income from the Long-Term Social Security System are entitled to 75% of the amount of the Universal Old Age Pension. In addition, funeral expenses are granted to beneficiaries.
356. In Chile, the old-age and disability solidarity pension system created by Law No. 20.255 operates under two major institutions or systems. The first establishes a basic old-age pension for those who are not entitled to a pension under any other pension system. The second mechanism is the old-age solidarity pension contribution, which consists of a monthly economic benefit aimed at supporting people with lower incomes who receive low old-age pensions, thereby allowing them to improve or supplement their pensions. With respect to the disability pension system, a system similar to that for old age pensions is established, with a basic disability pension system for those persons who are declared disabled and are not entitled to any other pension. It also establishes the disability solidarity pension contribution system, the purpose of which is to support low-income people who receive low disability pensions.

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<sup>363</sup> Argentina, Response to the Questionnaire, January 9, 2019. [Law 27.260 National Historical Reparation Program for Retirees and Pensioners](#), June 28, 2016.

<sup>364</sup> Argentina, Response to the Questionnaire, January 9, 2019. [Law 27.260 National Historical Reparation Program for Retirees and Pensioners](#), June 28, 2016.

<sup>365</sup> Argentina, Response to the Questionnaire, January 9, 2019. [Law 27.260 National Historical Reparation Program for Retirees and Pensioners](#), June 28, 2016.

357. In Colombia, the Social Protection Program for the Elderly, "Colombia Mayor", aims to increase protection for older persons who are neglected, do not have a pension, or are destitute, or living in extreme poverty, through the delivery of a monthly economic subsidy. "Colombia Mayor" is implemented in 1,107 municipalities and 3 departmental inspectorates, has more than 1,698,000 beneficiaries in the program, and is supported by the municipal mayors' offices, which play a fundamental role in the execution and monitoring of the program. The subsidies of the "Colombia Mayor" Program are delivered either as: a) a direct economic subsidy: these are resources that are paid directly to the beneficiaries through the banking system or entities contracted for this purpose, or: b) an indirect economic subsidy: these are resources that are granted in Basic Social Services, through Welfare Centers for the Elderly and Day Centers. Basic Social Services include food, lodging, and sanitation, medicines or technical aids, prostheses, or braces not included in the Health Benefits Plan (PBS) in accordance with the regime applicable to the beneficiary, nor financed from other sources.
358. In Costa Rica, there is a non-contributory regime administered by the Costa Rican Social Security Fund (CCSS) focusing on low-income individuals who do not have access to the other contributory pension regimes.
359. In Ecuador, the purpose of the non-contributory insurance policy is to cover the income needs of groups in situations of poverty and vulnerability, in order to preserve their basic consumption levels. There are two specific cash transfer programs for the elderly: (a) Pension for Older Adults, which consists of a monthly monetary transfer of USD 50.00 for people aged 65 and older who do not have access to contributory social security coverage, in order to cover economic gaps and expenses due to vulnerabilities that are exacerbated by age; and (b) My Best Years Pension, which, in order to contribute to universal social security coverage and reduce income inequality among the elderly, increases the non-contributory pension from USD 50 to USD 100 for older adults identified as living in extreme poverty.
360. In Jamaica, there are several social assistance programs, other than the statutory contributory social security scheme, one of which is the "Promotion through Health and Education Program" (PATH). Under PATH, people over 60 in eligible families receive a cash transfer if they do not receive a pension from the National Insurance Scheme.<sup>366</sup>
361. In Mexico's non-contributory pension systems, the universal non-contributory pension "Pension for the Welfare of the Elderly" was implemented as of 2019 in order to grant economic support to the indigenous or Afro-Mexican elderly population aged 65 years or older, and to the elderly population aged 68 years or older.<sup>367</sup>

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<sup>366</sup> Jamaica, Response to the Questionnaire, January 31, 2019.

<sup>367</sup>Mexico, [Programa Pensión para el Bienestar de las Personas Adultas Mayores \(Pension for the Well-being of Older People\)](#), 2019.

362. In Paraguay, the Food Pension Program for the Elderly administered by the Ministry of Finance accounts for 97% of the total subsidies granted by the Government, through non-contributory pensions reportedly benefiting 219,780 persons as of the end of 2020.
363. In Panama, the Special Economic Transfer Program for the Elderly "B./120 a los 65" consists of the delivery of 120 balboas per month to senior citizens 65 years of age or older who receive no retirement or pension benefits and who live in conditions of social risk, vulnerability, marginalization, or poverty.
364. In 2011, the National Solidarity Assistance Program - known as "Pension 65" - was established in Peru, and progressively implemented in the poorest districts of the country, with a view to granting economic subsidies to adults aged 65 or older living in extreme poverty.<sup>368</sup>
365. Trinidad and Tobago's Social Protection System uses existing public health infrastructure to operate both contributory and non-contributory schemes, including universal access to health care. Social security and social assistance programs provide income security for the elderly through the National Insurance Board (NIB), which administers social security, and the Social Welfare Division (SWD) of the Ministry of Social Development and Family Services, which administers social assistance programs. The Senior Citizens Pension Program (SCP) is funded by the Ministry of Finance and administered by the Social Welfare Division of the Ministry of Social Development and Family Services. The Senior Citizens' Pension<sup>369</sup> is a monthly bonus paid to persons 65 years of age or older based on their income and residential status provided they have resided in the country for 20 years prior to the date of application, whereby absences must not total more than five years during the twenty years preceding the application; failing that, the applicant must have resided fifty years in total in Trinidad and Tobago.
366. In Uruguay, the social security system in the retirement stage reports very high levels of coverage. In 2014, the percentage of people aged 65 and over collecting pensions and/or retirement benefits was 87.4% (MIDES, DINEM based on Continuous Household Surveys). By 2017, 84.6% of men and 63.9% of women were receiving a pension. Women's relatively lower access to pensions is due to the fact that they spend less (or less continuous) time in the labor market due to the sexual division of labor.<sup>370</sup> With regard to pensions, the proportion of women receiving this benefit is much higher than that of men, with less than 8% of men receiving a pension, while half all women receive one. In order to ensure greater access, as of 2005 a policy was implemented to make the conditions for access to contributory

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<sup>368</sup> Peru, Response to the Questionnaire, March 20, 2019. [Supreme Decree No. 081-2011-PCM](#) that creates the Social Program called National Solidarity Assistance Program Pension 65 and [Supreme Decree No.009-20212-MIDIS](#) that extends the coverage of the National Solidarity Assistance Program "Pension 65" and the National Program of Direct Support to the Poorest "Juntos".

<sup>369</sup> Trinidad & Tobago, Response to the Questionnaire, February 10, 2019. Ministry of Social Development and Family Services, [Senior Citizens' Pension](#).

<sup>370</sup> Uruguay, Response to the Questionnaire, January 31, 2019.

ry and disability pensions and retirement benefits more flexible. In the case of pensions, the State reported that it reduced the requirement from 35 to 30 years of work to qualify for retirement at age 60. In 2011, introduction of the age bonus for retirees aged 70 or older was completed for those senior citizens whose income does not exceed three “BPC” (the index used to calculate taxes, income, and social benefits).

- 367.** According to information provided to the IACHR by Venezuelan Civil Society,<sup>371</sup> the coverage of persons with old age pensions in Venezuela has been increasing, but irregularly. There are no detailed data showing the level of access of the elderly population to these pensions. In 2010, the Office of the President approved Decrees 7.401 and 7.402 to incorporate non-contributing or under-contributing individuals into the social security system. In 2011, 216,492 people were incorporated through the social assistance program “Gran Misión en Amor Mayor (GMAMV)” and in 2012 the number increased to 500,000, dropping abruptly to 80,000 in 2013 and to less than 60,000 in 2014, with no further information thereafter. A survey of the Observatorio Mirandino del Envejecimiento in 2014 conducted among 734 elderly people in Miranda State (OME Survey), showed that 31% were not beneficiaries of old age pensions from the IVSS or those granted by the GMAMV. Among those receiving a pension, 95% stated that this was their only source of income, 55% stated that they spent most of the pension on food, 67% said that the amount was insufficient to cover their expenses, and 38% were forced to reduce their food consumption levels. On March 30, 2016, the National Assembly approved the Law on a Food and Medicine Voucher for Pensioners and Retirees designed to supplement the monthly income of pensioners and retirees of the public and private sector, in order to protect their right to food and the acquisition of medicines. However, to date, the national government has not implemented this norm. Also noteworthy is the situation of more than 15,000 Venezuelan pensioners abroad who, since 2015, have stopped receiving the stipends due to them by right, and many of them have complained that they are destitute and dependent on sporadic aid.
- 368.** With regard to social security protection for older migrants, the IACHR notes that there are international agreements aimed at extending social security coverage to older persons. According to the information provided to the IACHR, these agreements allow people from one country who work abroad to access old age, disability, or death pensions in the country where they reside. As an example, Uruguay reported that it has implemented international agreements for the recognition of years of work and contributions outside the country for people aged 60 and over, and that it is the country in the Americas - together with Chile and Canada - that honors the most international agreements.<sup>372</sup>

<sup>371</sup> CONVITE Venezuelan Civil Association, Response to the Questionnaire, January 24, 2019.

<sup>372</sup> Uruguay, Response to the Questionnaire, January 31, 2019.



369. Existing multilateral agreements in the region, some of which are promoted by certain bodies in their capacity as subjects of international law, include: the Ibero-American Multilateral Social Security Agreement (CMISS) promoted by the Ibero-American Social Security Organization (OISS), which is in force between Bolivia, Brazil, Chile, Ecuador, El Salvador, Spain, Paraguay and Uruguay<sup>373</sup>; the Multilateral Social Security Agreement of the Southern Common Market (MERCOSUR), ratified by Argentina, Brazil, Paraguay and Uruguay<sup>374</sup>; the Social Security Agreement of the Caribbean Community (CARICOM)<sup>375</sup>; and the Andean Social Security Instrument of the Andean Community (CAN), currently comprising four member countries: Bolivia, Colombia, Ecuador, and Peru.<sup>376</sup> In addition, the Multilateral Agreement on Social Security of October 14, 1997, signed by Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and Panama within the framework of the Central American Integration System (SICA), is not yet in force, since it requires the deposit of the instruments of ratification by the signatory countries and has only been ratified by Costa Rica.<sup>377</sup>

#### **4.8 Rights of the elderly to safety, to a life free from violence of any kind, and not to be subjected to torture or cruel, inhuman, and degrading treatment or punishment.**

370. In this section, the IACHR describes standards in relation to the rights to security, to a life free from any type of violence and to be free from torture or cruel, inhuman, and degrading treatment or punishment in connection with the vulnerability of older persons. Accordingly, based on the standards related to violence and discrimination established in the IAHRs, the Commission starts from the recognition that older persons are exposed to a greater risk of violence due to historical age-based prejudices. The standards referred to form part of the protections set forth in the Convention on Older Persons with respect to the integrity and freedom from violence of older persons. Next, the IACHR refers to specific programs and policies for protecting older persons against violence through prevention as well as the facilitation of mechanisms for reporting and promptly addressing violence.

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<sup>373</sup> OEA-CISS, [Análisis de convenios bilaterales y multilaterales de seguridad social en materia de pensiones \(Analysis of Bilateral and Multilateral Social Security Agreements as they Relate to Pensions\)](#), 2015, p. 25.

<sup>374</sup> OEA-CISS, [Análisis de convenios bilaterales y multilaterales de seguridad social en materia de pensiones \(Analysis of Bilateral and Multilateral Social Security Agreements as they Relate to Pensions\)](#), 2015, p. 69.

<sup>375</sup> OEA-CISS, [Análisis de convenios bilaterales y multilaterales de seguridad social en materia de pensiones \(Analysis of Bilateral and Multilateral Social Security Agreements as they Relate to Pensions\)](#), 2015, p. 27.

<sup>376</sup> OEA-CISS, [Análisis de convenios bilaterales y multilaterales de seguridad social en materia de pensiones \(Analysis of Bilateral and Multilateral Social Security Agreements as they Relate to Pensions\)](#), 2015, p. 31.

<sup>377</sup> [Multilateral Agreement on Social Security](#), October 14, 1997.

**A. International standards regarding the rights of the elderly to safety, to a life free from violence and to be free from torture and cruel, inhuman, and degrading treatment or punishment.**

- 371.** The Commission has recognized that belonging to certain historically discriminated groups exposes their members to a disproportionate risk of being victims of violence based on the prejudices and stereotypes that surround them. In this regard, the IACHR has recognized that the concepts of prejudice and stereotype are interrelated.<sup>378</sup> For example, on prejudice and stereotypes based on gender orientation and gender identity, the IACHR noted that “Gender stereotyping refers to a preconception of attributes, conducts, characteristics possessed by members” of a particular group [A] stereotype presumes that all members of a certain social group possess particular attributes or characteristics... [Therefore] an individual, simply by virtue membership in that group, is believed to conform to the generalized view or preconception...”.<sup>379</sup>
- 372.** Likewise, in relation to the situation of violence to which women are exposed because of their gender, the I/A Court H.R. has pointed out “the importance of recognizing, drawing the attention to, and rejecting negative gender stereotypes, which are one of the causes and consequences of gender violence against women.”<sup>380</sup> In this regard, the Inter-American human rights system has recognized the close relationship between the right of women to live a life free of violence and the right to equality and non-discrimination.<sup>381</sup> Consistently, the Court has held that violence against women is a form of discrimination.<sup>382</sup>
- 373.** In response to the above, within the framework of the IAHRs, the States upheld the autonomous right of women to live a life free of violence. In this regard, Article 6 of the Convention of Belém do Pará expressly states that the right of every woman to live free from violence includes her right to “the right of women to be free from all forms of discrimina-

<sup>378</sup>CIDH, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, OAS/Ser.L/V/II.rev.2 Doc. 36, November 12, 2015, par. 41. In formulating these considerations in the aforementioned report, the IACHR relied on the following work: María Mercedes Gómez, Chapter 2: “Violencia por Prejuicio” en *La Mirada de los Jueces: Sexualidades diversas en la jurisprudencia latinoamericana*. Volume 2, Cristina Motta & Macarena Sáez, eds, Bogotá: Siglo del Hombre Editores, Red Alas, 2008, pp. 99

<sup>379</sup>CIDH, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, OAS/Ser.L/V/II.rev.2 Doc. 36, November 12, 2015, par. 41. In formulating these considerations in the aforementioned report, the IACHR relied on the following work: María Mercedes Gómez, Chapter 2: “Violencia por Prejuicio” en *La Mirada de los Jueces: Sexualidades diversas en la jurisprudencia latinoamericana*. Volume 2, Cristina Motta & Macarena Sáez, eds, Bogotá: Siglo del Hombre Editores, Red Alas, 2008, pp. 99

<sup>380</sup> I/A Court H.R., Case of Digna Ochoa et al. v. México. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2021. Series C No. 447, par. 123.

<sup>381</sup>IACHR. Report No. 28/07. Cases 12.496-12.498. Merits. Claudia Ivette González and others. 2007; IACHR, Report No. 54/01. Case 12.051 Merits. Maria da Penha Maia Fernandes. Brazil. 2001; IACHR, Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II, Doc. 68, 2007; and I/A Court H.R., Case I.V. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 389, par. 253.

<sup>382</sup>IACHR, I/A Court H.R., Case of Espinoza Gonzáles v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 221; I/A Court H.R., Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, par. 207; and I/A Court H.R., Case of the Miguel Castro-Castro Prison. Merits, Reparations, and Costs, Judgment of November 25, 2006. Series C No. 160, par. 303.

tion" and "to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination." Specifically, the CEDAW Committee's General Recommendation No. 27 on older women and the protection of their human rights stated that "States parties have an obligation to draft legislation that recognizing and prohibiting violence, including domestic, sexual violence and violence in institutional settings, against older women, including those with disabilities. States parties have an obligation to investigate, prosecute and punish all acts of violence against older women, including those committed as a result of traditional practices and beliefs."<sup>383</sup>

374. Accordingly, taking into consideration the link established between prejudices and stereotypes and the rights to equality and non-discrimination and to live a life free of violence, the Commission considers that the prejudices and stereotypes surrounding the elderly, especially older women, with respect to their alleged defenselessness due to cognitive decline, their health situation, dependence, lack of autonomy, and reduced value as productive members of society, expose them to a high risk of being victims of violence.
375. As regards torture and cruel, inhuman, and degrading treatment or punishment, the Inter-American Court of Human Rights has recognized that their prohibition is a norm of *jus cogens*.<sup>384</sup> In this regard, the Inter-American Court has emphasized that "as to the obligation to prevent and sanction torture derived from the American Convention and the Inter-American Convention to Prevent and Sanction Torture, the Court considers that States should pay special attention to the situation of these vulnerable groups that are deprived of liberty and to their specific risk of torture and other ill-treatment so that they strengthen the control mechanisms of prevention and sanction with respect to both prison staff and third persons."<sup>385</sup>
376. The Convention defines violence against older adults as "any act or conduct that causes death or physical, sexual, or psychological harm or suffering, either in the public or the private sphere." The definition of violence includes, inter alia, "different forms of financial, physical, sexual, and psychological abuse and mistreatment, expulsion from the community, and any form of abandonment or negligence that takes place within the family or household unit or that is perpetrated or tolerated by the State or its agents, regardless of where it occurs." Accordingly, the I/A Court H.R. has indicated that when a person is in a special situation of subjection, the State is required to act as a guarantor. Thus, said person "is in a similar situation to persons deprived of liberty, and therefore the standards established in

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<sup>383</sup>UN, CEDAW, General Recommendation No. 27 on older women and the protection of their human rights, 2010, para. 37.

<sup>384</sup>I/A Court H.R., The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States Advisory Opinion OC-26/20 of November 09, 2020, Series A No. 26, para. 106.

<sup>385</sup>I/A Court H.R. Differentiated approaches with respect to certain groups of persons deprived of liberty. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, par. 46.

its jurisprudence in relation to those persons are applicable".<sup>386</sup> Thus, the IACHR considers that older persons who are in a situation of special subjection by the State, either because they are under its partial or permanent care, trigger obligations related to the safeguarding of their health and respect for their right to integrity.

- 377.** Article 9 of the Convention on Older Persons establishes their right to security and to a life free from violence and abuse, to be treated with dignity and to be respected and valued, regardless of race, color, sex, language, culture, religion, political or other opinion, social, national, ethnic or indigenous origin and cultural identity, socioeconomic status, disability, sexual orientation, gender, gender identity, economic contribution or any other condition.
- 378.** The IACHR emphasizes that CPM protection with respect to violence is intersectional. Accordingly, the CPM identifies situations of multiple discrimination in contexts of violence, in which groups or sets of older persons in a special situation of vulnerability and historical discrimination suffer disproportionate impairment of their rights due to the confluence of multiple factors of vulnerability and risk of discrimination associated with a series of particular conditions, such as being a woman, a LGBTI person, Afro-descendant, indigenous, disabled, migrant, poor, etc.
- 379.** Article 9 also establishes the commitment of the States to "adopt legislative, administrative, and other measures to prevent, investigate, punish, and eradicate acts of violence against older persons, as well as those that would enable reparation for harm occasioned by such acts." Article 10 of this instrument establishes the right of older persons not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment and the duty of States to take legislative, administrative, or other measures to prevent, investigate, punish, and eradicate all types of torture or other cruel, inhuman, or degrading treatment or punishment of older persons.

**B. National policies and programs regarding the rights of older persons to security, to a life free from violence, and to be free from torture and cruel, inhuman, and degrading treatment and punishment**

- 380.** From the information reported, the IACHR notes that the recognition of the rights of older persons to security, to a life free from any type of violence, and to be free from torture or cruel, inhuman, and degrading treatment or punishment has been included in the legislation of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, and Uruguay. These States include these protections in general through laws on domestic violence, as well as in regulations related to the protection of the elderly.

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<sup>386</sup>I/A Court H.R. Case of Quispialaya Vilcapoma v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2015. Series C No. 308, paragraph 123

381. The Commission notes that references by States to fair treatment and a life free from violence of the elderly address specific interventions at the community level and State personnel who have contact with this population. From a preventive standpoint, the IACHR highlights training and promotion programs for the proper treatment of the elderly in Argentina, Chile, and Ecuador.
382. As regards complaints, the Commission notes the installation of special telephone lines to assist the elderly in situations of violence in Costa Rica, the activation of protection orders in situations of domestic violence in Dominica and the Dominican Republic, comprehensive care services in Ecuador and Uruguay, multisectoral coordination guidelines and joint action by various authorities in Mexico and Peru, and rapid response strategies in Trinidad and Tobago,
383. Below, the IACHR will describe the policies and programs reported by States related to security, freedom from violence, and prohibition of torture. The information in the section is systematized in Table 8: Security, freedom from violence, and prohibition of torture, and in more detail in the Annex to this report. Likewise, given the interrelation of these rights with access to justice, some components related to these protections are discussed in this section.
384. The objective of Argentina's National Program for the Promotion of Proper Treatment of the Elderly is to promote a culture of proper treatment from a rights-based perspective, through actions to disseminate information, raise awareness, and prevent abuse and mistreatment. The program covers physical, emotional, psychological, economic, financial, and sexual abuse, as well as property abuse and other material damage. This program promotes actions that foster proper treatment of the elderly and their empowerment in the exercise of their rights; provides training on the rights of the elderly, specifically to professionals and technical staff working with this population group; implements community awareness projects; and promotes the creation of formal support networks for the elderly and their families, as well as other actions. As part of this program, the State reported that since 2012, the National Campaign for Proper Treatment of the Elderly has been conducted every year. It encourages people to review socially deep-seated prejudices and stereotypes using graphic and audiovisual methods to raise awareness of situations of abuse and mistreatment suffered by the elderly and to help forge a culture in which older persons are treated properly.
385. For their part, the provinces have a number of tools designed to protect the elderly from various forms of abuse. In the Autonomous City of Buenos Aires, for example, the Proteger Program, through an interdisciplinary team, offers assistance and support to elderly victims of different types of violence. Also, based on the information provided, from a cross-cutting perspective, the National Women's Institute provides face-to-face and virtual training in which a specific module on "Old age from a gerontological and gender perspective" provides training for interdisciplinary teams dedicated to the care of women in situations of violence, along with, *inter alia*, courses open to the public on women's rights to a life free from violence.

386. Chile reported that, in 2012, the National Service for the Elderly (SENAMA) established the Program Against Violence and Abuse of the Elderly, which was replaced in 2014 by the Program of Proper Treatment of the Elderly, aimed at contributing to the recognition, promotion, and exercise of the rights of the elderly, by preventing their mistreatment, the promotion of proper treatment, and the provision of advice and coordination via regional and local networks. The Proper Treatment of the Elderly Program consists of actions to prevent mistreatment of the elderly and promote proper treatment of them, through training, awareness-raising, and coordination, from an intersectoral, comprehensive, and psycho-socio-legal perspective. In addition, it provides, in coordination with local offices and actors such as the Municipalities, Support Program for Victims of Violent Crimes, and others, advice, management, and coordination of cases and consultations involving abuse of older persons, especially domestic violence, which are reported to SENAMA.
387. In Costa Rica, the Línea Dorada program - included in the 2019-2022 National Development and Public Investment Plan - responds to the need to build responses to preserve the dignity, integrity, and respect for the human rights of older adults at social risk, who are victims of violence, neglected, needy, destitute, or homeless.
388. In Dominica, the Social Welfare Division is not an agency specializing in older persons, but it is responsible for investigating situations of domestic violence in conjunction with the Police. Although it is not a law devoted exclusively to the elderly, the Domestic Violence Protection Act provides for the protection of dependents, who are defined as persons "over eighteen years of age who by reason of physical or mental disability, age or infirmity, are dependent upon the petitioner or respondent for his or her welfare" (Section 2, The Domestic Violence Protection Act). The protection order may be requested by a dependent, a social welfare officer, or a police officer when an elderly dependent is involved.
389. In the Agenda for the Protection of Rights of the Elderly, the Council for the Protection of Rights of the Metropolitan District of Quito, Ecuador, establishes as a policy that the elderly should live with dignity and security, without being exposed to any type of exploitation or physical or psychological mistreatment. To that end, policy guidelines include: a) the implementation of actions to prevent mistreatment and all types of violence against older persons through violence prevention campaigns; b) the implementation of comprehensive care services for elderly victims of violence through specialized care for older adults within the justice system and special methodologies for addressing violence against older persons in existing municipal services.
390. Jamaica's National Policy for Older Persons<sup>387</sup> states that "older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse."

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<sup>387</sup> National Council for Senior Citizens, Ministry of Labour and Social Security, [National Policy for Senior Citizens](#), 1997, p 2.

391. In Mexico, the 2021-2024 Institutional Program of the National Institute for the Elderly<sup>388</sup> establishes among the guidelines for coordination with federal entities, municipalities, and mayors' offices the requirement "to report to the competent authorities cases of violence, exploitation, and, in general, any act that harms the elderly".
392. In Peru, there is a Protocol for joint action by the Women's Emergency Centers and Police Stations<sup>389</sup> or Police Stations specializing in protection against domestic violence. In addition, Peru approved the Protocol for the detection, referral, and monitoring of users in situations of violence, and established the "Ayza" mobile app of the Pension 65 Program. In addition, there is a nationwide telephone "100 hotline," a cost-free service specializing in providing information, guidance, counseling, and emotional support to persons affected by or involved in domestic or sexual violence, which operates seven days a week, 24 hours a day. For its part, the Unit for Prevention and Integral Promotion of Domestic and Sexual Violence of the Ministry of Women and Vulnerable Populations runs annual, national campaigns, including "100pre hay una solución" to promote the use of the 100 line and "La indiferencia también es violencia" (Indifference is also violence), with the aim of promoting the commitment of society in the fight against all forms of violence against women.
393. In the Dominican Republic, the National Council for the Elderly (CONAPE) has a Unit on Violence against the Elderly in its Legal Division, which is responsible for ensuring the protection of older adults facing various forms of violence, such as physical, psychological, emotional, or sexual abuse.
394. In Trinidad and Tobago, several services are available to facilitate the reporting of abuse and conduct investigations.<sup>390</sup> The State reported the installation of Older Persons Information Centres (OPIC), in which elderly people, their representatives, or family members can file complaints for the investigation of all types of abuse of older persons. The work done by the OPIC includes investigations of elder abuse cases in both private nursing homes and residential homes. The State also pointed to the "Rapid Response Strategy" as a way to reduce the response time in dealing with critical or urgent cases of reported abuse, mistreatment, or mismanagement. It involves the application of a standardized forty-eight (48) hour deadline to respond to complaints received at the Older Persons Information Centre (OPIC), whether in person without an appointment, by phone call, or via social networks.

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<sup>388</sup> Secretaría de Gobernación [Ministry of the Interior] (SEGOB), [Programa Institucional del Instituto Nacional de las Personas Adultas Mayores \(INAPAM\) 2021-2024](#), April 16, 2021.

<sup>389</sup> [Supreme Decree No. 006-2018-MIMP](#), which approves the Protocol for joint action by the Women's Emergency Centers and Police Stations or Police Stations Specializing in Protection Against Family Violence, August 2, 2018.

<sup>390</sup> Trinidad and Tobago, Response to the Questionnaire, February 6, 2019.

395. Trinidad and Tobago also reported that there are several partner agencies and ministries that collaborate with the Ministry of Social Development and Family Services at the OPIC Center, with a view to providing a rapid and appropriate response to reports of elder abuse. In particular, and depending on the seriousness of the case, the Trinidad and Tobago Police Service is contacted. It then conducts investigations and provides additional data regarding the complaint. In this regard, the State noted that the Victim and Witness Support Unit of the Trinidad and Tobago Police Service provides support services for elder abuse cases by addressing all forms of criminal victimization (*victimización por delitos*), including violence against older persons.
396. The National Institute for the Elderly, under the Ministry of Social Development of Uruguay, has a service for elderly people in suspected or confirmed situations of abuse and/or mistreatment covering the capital city of Montevideo and the metropolitan area. An interdisciplinary team provides guidance, social, psychological and legal support, and health assessment to the elderly, as well as to their family members, relatives, institutions, or organizations, with whom it develops a comprehensive approach based on the complexity of this phenomenon which, although it mostly occurs within the family, also occurs at the level of institutions, the community, and public spaces. Although it does not have a specific service for the care of older persons in situations of abuse and mistreatment, the Ministry of the Interior attends to the general population through the Specialized Units on Domestic and Gender Violence (UEVBG).

#### 4.9. Access to justice

397. In this section, the IACHR describes the main changes that have taken place regarding the right of access to justice and its relation to the situation of older persons. In this regard, the IACHR recognizes that the right to judicial protection is widely recognized in international human rights law instruments. These standards have been adapted as a result of interpretations made by human rights protection bodies and have proved to be useful for protecting vulnerable segments of the population, such as older persons. Next, the Commission addresses the regulations and programs reported by States to promote and guarantee access to justice for the elderly, with emphasis on the application of protocols for the care of this segment of the population, as well as the installation of comprehensive centers that provide care and legal representation in cases involving, for instance, violence, dispossession, and pensions.

##### A. International standards with respect to the right of access to justice

398. The right of access to justice is extensively regulated in multiple international instruments for the protection of human rights,<sup>391</sup> including the ADRDM, Article XVIII of which establishes that "[e]very person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will

<sup>391</sup> UDHR, Article 10; ICCPR, , Article 2.3;



protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.” Along the same lines, Article 25 of the ACHR establishes that “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

399. Organs of the IAHRs have pointed out that the right to judicial protection entails the duty of states to provide an effective judicial remedy against acts that violate the rights of persons under their jurisdiction. The Inter-American Court has emphasized the need for domestic proceedings to guarantee genuine access to justice, in order to decide on whatever right may be in dispute.<sup>392</sup> It has also pointed out that, in order to be effective, such proceedings must not only provide formal remedies; they must also achieve results or responses to the violations of the rights contemplated in the Convention, in the Constitution, or in laws.<sup>393</sup>
400. However, a major contribution of the inter-American system has been to formulate these general obligations regarding access to justice in relation to groups that are in a particularly vulnerable situation. The Commission has recognized that the IAHRs has identified structurally embedded situations of inequality that restrict access to justice for certain segments of society. In these cases, the IACHR has highlighted the State's obligation to provide free legal services and to strengthen community mechanisms to that end, in order to provide these social sectors in situations of disadvantage and inequality with access to judicial protection and adequate information regarding their rights and the judicial remedies available for their protection.<sup>394</sup>
401. The development of these standards is consistent with the emergence of specific obligations regarding access to justice for persons with disabilities<sup>395</sup> and women,<sup>396</sup> for example. In these terms, the Brasilia Regulations regarding Access to Justice for Vulnerable People<sup>397</sup> are relevant, as they aim to guarantee the conditions for effective access to justice for vulnerable persons without any discrimination by encompassing the whole set of policies, measures, facilities, and support that allow such persons to make the most of judicial services. In rela-

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<sup>392</sup>I/A Court H.R. Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 107; Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006, Series C No. 148, par. 365

<sup>393</sup>I/A Court H.R. Case of Abrill Alosilla et al. v. Peru. Merits, Reparations, and Costs, Judgment of March 04, 2011. Series C No. 223, par. 75

<sup>394</sup>IACHR, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights, OEA/Ser.L/V/II.129 , Doc. 4, September 7, 2007, par. 9.

<sup>395</sup>Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (CIPCD), Art.III.1.a); Convention on the Rights of Persons with Disabilities (CRPD), Article 13.

<sup>396</sup> Convention of Belém do Pará, Article 4.g.; CEDAW, Article 15.

<sup>397</sup> [Brasilia Regulations regarding Access to Justice for Vulnerable People](#), XIV Ibero-American Judicial Summit, Brasilia, March 4-6, 2008, pp. 5-6.

tion to age, they specifically state: "Aging can also constitute a cause of vulnerability if an elderly adult person finds it especially difficult to exercise their rights before the justice system, on the basis of their functional abilities." The fourth section establishes rules for the review of procedures and procedural requirements as a means of facilitating access to justice.

402. Accordingly, the Convention on Older Persons combines various aspects involving the right to access to justice for older persons, such as respect for equality and non-discrimination, the importance of the time factor in judicial proceedings in cases involving claims of violations of the rights of older persons, preferential and differential treatment, the need for procedural adjustments, training on the rights of older persons for personnel involved in the administration of justice, among others. Article 4.c) of the CPM establishes the commitment of States to adopt and strengthen all legislative, administrative, judicial, budgetary, and any other measures, including adequate access to justice, in order to guarantee differentiated and preferential treatment for the elderly in all areas.
403. Likewise, Article 30 of the CPM establishes the right to equal recognition as a person before the law. Here, the States Parties reaffirm that older persons have the right to recognition as a person before the law and recognize that an older person has legal capacity on an equal footing with others in all aspects of life. States Parties commit to adopting measures to provide access for older persons to the support they may need to exercise their legal capacity and to ensure that, in all measures regarding the exercise of their legal capacity, appropriate and effective safeguards are provided to prevent abuse in accordance with international human rights law.
404. For its part, Article 31 refers specifically to the right of access to justice and establishes that: Every older adult has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or her, or for the determination of his or her rights and obligations of a civil, labor, fiscal, or any other nature.
405. Likewise, in accordance with the CPM, the States Parties undertake to guarantee due diligence and preferential treatment for older adults in the processing, resolution, and enforcement of decisions in administrative and judicial proceedings. The Convention specifies that judicial action should be particularly expeditious in cases where the health or life of an older person is at risk, highlighting the importance of the time factor and the need for specific procedural law rules for the elderly. Finally, the Convention also establishes the commitment of States to develop and strengthen public policies and programs aimed at the promotion of alternative dispute resolution mechanisms and of training for personnel involved in the administration of justice, including police and prison personnel, on the protection of the rights of older persons.

## B. National policies and programs for the exercise of the right to justice

406. The IACHR highlights the following information on the exercise of the right to justice and its relationship with the elderly through plans and programs developed by the States. In this regard, the IACHR notes that legislation guaranteeing access to justice for the elderly is contained in specialized norms of a general nature, as well as in norms related to violence, dispossession, pensions, and retirement, as reported by Argentina, Bolivia, Brazil, Peru, and Uruguay.
407. Regarding programs for the judicial protection of the elderly, the Commission finds that care for older adults has been addressed in protocols with specific guidelines and directives for this purpose, as reported by Argentina, Brazil, Chile, Costa Rica, Paraguay, and Peru. It is also a widespread practice in the region to set up comprehensive care offices for the elderly, as reported by Argentina, Bolivia, Chile, and Peru. According to the information provided to the IACHR, preferential attention is also a common practice in Brazil, Chile, and Costa Rica. Peru also reported that there is an alert system that informs justice operators of the existence of proceedings involving the elderly.
408. The IACHR highlights the existence of services for access to justice in cases involving undocumented persons, dispossession, and mistreatment, as well as the implementation of measures to achieve closer contact between the prosecutorial investigation agents and the victims of crime, including the elderly, as is the case in Uruguay.
409. The State of Argentina reported that its Public Prosecutors' Office has had a Program on Health, Disability, and Elderly Issues since 2012, which addresses these issues in order to bolster the capacity of public defenders to defend the rights of the groups concerned, as well as to promote public policies aimed at increasing sensitivity, awareness, and protection of the human rights involved. Thus, the general objective of the program is to promote activities aimed at the defense and protection of human rights and the reduction of obstacles to access to justice for, among others, older persons. The State reported that this program is responsible for developing strategies and projects for collaboration and coordination of activities to provide a comprehensive range of services to address the problems of the elderly.
410. It also indicated that another branch of the Public Prosecutors' Office has a Prosecution Unit for the investigation of crimes committed within the sphere of competence of the National Institute of Social Services for Retirees and Old-Age Pensioners (INSSJP-PAMI). This entity receives complaints from individuals, associates, agents of the Institute, or providers, referring to actions or omissions that may constitute a crime within the sphere of competence of the INSSJP-PAMI, especially in relation to economic crimes that may affect assets. Another Prosecutorial Investigation Unit that concerns the elderly is the one related to Social Security Crimes, the UFISES. This is a specialized unit in charge of investigating crimes related to social security in general. This coverage scheme is organized into four

subsystems dealing with: a) pensions; b) labor risks; c) unemployment; and d) family allowances and the social welfare system. UFISES works on the prevention and investigation of criminal or potentially punishable conduct that may affect social funds and their specific purposes. The unlawful conduct related to the social security system addressed by the Unit includes, inter alia, improper management of pension and/or social security benefits, and improper discounts made by cooperatives or mutual associations that grant loans to the non-working population (*sector pasivo*).

411. Argentina also reported progress with respect to legislation and pointed to Law No. 24.417 on Protection against Domestic Violence,<sup>398</sup> which includes the elderly and requires that violence be reported by social or educational, public or private assistance services, health professionals, and any public official in the course of his or her work. Based on the information provided, this Law is supplemented by Law No. 26.485 on Comprehensive Protection of Women and by Resolution 505/2013 approving the "Guidelines for Police Intervention in domestic violence cases." As regards domestic violence, the Supreme Court of Justice of the Nation has its Domestic Violence Office (OVD), which it established in 2006 with the aim of facilitating access to justice for people who, as victims of domestic violence, are especially vulnerable. The OVD works in an interdisciplinary manner 24 hours a day, every day of the year. It provides citizens with real access to justice, while at the same time helping members of the judiciary by providing the resources they need to go about their work. Every day, the OVD receives spontaneous input from people who approach the institution seeking information and guidance. It also receives cases referred to it by police stations, hospitals, and NGOs in the City of Buenos Aires.
412. Argentina also referred to other provincial levels of administration of justice, including the Superior Court of Justice of the Province of Corrientes, which, through Agreement 15/20, approved the "Single Protocol of action for the justice system of Corrientes in matters relating to elderly people in vulnerable situations<sup>399</sup>," which constitutes a guide to best practices and useful tools made available to the Judicial Offices for cases involving elderly people in vulnerable situations, thereby helping guarantee their effective access to justice.
413. Bolivia reported on the Protocol for the Care and Protection of Older Adults<sup>400</sup> (*Protocolo de Atención y Protección a las Personas Adultas Mayores*), which includes among its specific objectives "Standardizing the process of care for older persons by improving the efficiency of social occupation services and timely decision-making with a focus on access to

<sup>398</sup> Argentina, Response to the Questionnaire, January 9, 2019. [Law No. 24.417 Protection against Domestic Violence](#), November 7, 1994.

<sup>399</sup> Superior Court of Justice of the Province of Corrientes, Agreement 15/20, [Single Protocol of action for the justice system of Corrientes in matters relating to elderly people in vulnerable situations](#), 2020.

<sup>400</sup> Ministry of Justice and Institutional Transparency, Vice Ministry of Equal Opportunities, General Directorate of Children and Older Adults; [Protocolo de Atención y Protección a las Personas Adultas Mayores](#), May 2019.

justice." It also reported on the establishment of various specialized care entities for the elderly at the national and municipal levels in order to guarantee access to justice:<sup>401</sup> Social and Legal Guidance Centers for the Elderly - COSLAM, Comprehensive Plurinational Justice Services - SIJPLU; Plurinational Victim Assistance Service - SEPDAVI.

414. According to the information provided, COSLAMs are in charge of recognizing, defending, and promoting the rights of the elderly so that they can participate equally in social services and programs. COSLAMs provide legal assistance, sponsorship, conciliation, counseling, and case follow-up, and some Autonomous Departmental and Municipal Governments have set up offices to provide assistance in cases involving undocumented persons, dispossession, and mistreatment. The SIJPLU provide legal guidance services to the population in general that requires it as well as services for the defense and restitution of rights by helping in cases of violation of citizens' rights, representing victims, and reporting to the corresponding bodies. By law, the Ministry of Justice and Institutional Transparency must provide preferential legal assistance to the elderly in the form of information and legal guidance, representation, legal sponsorship, and mediation for conflict resolution. The SEPDAVI also provide legal aid and psychological and social support to all low-income victims. In cases involving older persons, preferential treatment and immediate attention are also provided.
415. Brazil specifically recognizes the right to justice for the elderly in Law No. 10.741, Older Persons Statute, of October 1, 2003.<sup>402</sup> Article 70 establishes that "The Executive may establish specialized courts exclusively for older persons". For its part, Article 71 prioritizes the processing of cases and procedures and the execution of legal acts and proceedings involving a person of sixty years of age or older. In particular, it gives special priority to proceedings involving people over eighty years of age. The priority includes proceedings and procedures in the Public Administration, companies that provide public services, financial institutions, and the preferential service provided with the Ombudsperson's Office of the Union, the States, and the Federal District in relation to legal assistance services.
416. The Supreme Court of Chile published the Protocol on Access to Justice for Older Adults,<sup>403</sup> containing recommendations for the care of the elderly in the Judiciary and the national and international legal framework to guarantee access to justice for older persons, by promoting equal access to justice and the effective exercise of their rights. The Protocol contains a set of cross-cutting recommendations (protection of specific rights, care and treatment, language and information, infrastructure and training, coordination), as well as specific recommendations on family, criminal, civil, labor, and second instance matters. In the section on the protection of specific rights, it is worth noting the adoption of procedural

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<sup>401</sup> Bolivia, Response to the Questionnaire, Official Letter JPB-OEA-NV04-192019, January 24, 2019.

<sup>402</sup> [Estatuto do Idoso e dá outras providências](#), Law No. 10741 of October 1, 2003.

<sup>403</sup> Supreme Court of Chile, [Protocolo de Acceso a la Justicia de Personas Mayores \(Protocol on Access to Justice for Older Persons\)](#), 2021.

adjustments, the guarantee of due diligence and preferential treatment for the elderly, and particularly expeditious judicial action in cases where the health or life of the older person is at risk. In terms of programs, Chile reported the launch of the "Defensor Mayor" program coordinated by the National Service for the Elderly (SENAMA), which provides free specialized legal assistance for older adults, with nationwide coverage, in situations of abuse, mistreatment, violence, or other violations of their rights.

417. The Judicial Branch of Costa Rica approved policy guidelines to guarantee adequate access to justice for the elderly,<sup>404</sup> with a view to adapting the services of the Judiciary and its various offices to the needs of older persons and set guidelines for the correct procedures to follow. The guidelines cover aspects such as adequacy of services, preferential processing, priority attention, as well as awareness and training. It is worth noting the guidelines regarding preferential processing given the harm done to older persons by excessively long judicial proceedings. They establish the need: "a) To expedite the proceedings in which the elderly are involved, especially the file processing stage with a view to concluding that stage as quickly as possible; b) To expedite resolution of the duly substantiated judgment so that it takes the age of the person into account; c) To expedite the execution of the judgment, in order to resolve the conflict definitively and in a timely manner; d) When hearing appeals related to proceedings involving older persons, the judicial authorities need to insist on applying institutional policy and adjust the service they provide in order to expedite the rulings of higher instances."
418. In Guatemala, the Judiciary approved the "Policy on Access to Justice for Older Adults 2019-2023"<sup>405</sup> in order to facilitate access to justice for older adults, establishing, as one of its specific objectives: training administrative and judicial personnel in the rights of older persons to achieve their effective recognition, observance, and application; optimizing available resources to make reasonable adjustments that allow access to justice with quality and warmth (*calidez*); implementing information and communication strategies on the rights of older persons; obtaining resources from international cooperation sources, and ensuring effective safeguarding of those resources.
419. In Paraguay, Supreme Court Order No.1024/15 establishes the guidelines of the policy of access to justice for the elderly and persons with disabilities for the Judiciary, in compliance with the Brasilia Regulations regarding Access to Justice for Vulnerable People of 2008, Order 633/10.

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<sup>404</sup> Judicial Branch of Costa Rica, [Policies to guarantee adequate access to justice for the adult population Mayor](#), 2016.

<sup>405</sup> Judicial Branch, "[Access to Justice Policy for Older Adults 2019-2023](#)", 2019.

420. Peru's Law on Older Adults<sup>406</sup> recognizes the right of access to justice in Article 5. ñ) and in its Enabling Regulations.<sup>407</sup> The State reported that it has a Judicial Care Protocol for Older Adults, the purpose of which is to promote preferential care for older adults who participate in judicial proceedings, in order to guarantee the exercise of their fundamental rights and freedoms, based on the recognition of their capacity, autonomy, and independence. Said Protocol was established within the framework of the Permanent Commission on Access to Justice for Persons in Condition of Vulnerability and Justice in Your Community, as part of the execution of the "National Plan for Access to Justice for Persons in Condition of Vulnerability - Peruvian Judicial Branch 2016- 2021".
421. Peru also reported that it has a Judicial Alert System for Older Adults<sup>408</sup>, the purpose of which is to alert judges to the existence of judicial proceedings involving the elderly in order to ensure that judicial proceedings involving elderly people in vulnerable conditions are conducted expeditiously. It also indicated that its Ministry of Justice and Human Rights, through the General Directorate of Public Defense and Access to Justice, has a nationwide network of Free Legal Assistance Centers -ALEGRA, which provide comprehensive legal services to people who cannot afford to pay for a private attorney.
422. The Ombudsperson's Office, for its part, informed the IACHR in relation to access to justice, that the Constitutional Court, in the order issued in case No. 02214-2014-PA/TC, amparo proceedings on pension matters, has established as binding case law that "all jurisdictional bodies have the obligation to expedite proceedings involving the rights of older persons: a responsibility that increases in accordance with the age of such persons." Within the Ministry of Women and Vulnerable Populations (MIMP), Ministerial Resolution No. 100-2021-MIMP approved the Protocol for the Care of the Women's Emergency Center,<sup>409</sup> establishing provisions for differentiated care, which includes older women.<sup>410</sup>
423. Uruguay introduced a new Criminal Code in 2018, in which the Attorney General's Office plays a leading role in the protection and care of victims. They have the right to be heard, to meet with the investigating prosecutor's team, and to receive prompt attention and support. In addition, the Victims and Witnesses Unit was established to work together with the prosecution teams and the Police from the very beginning to create a support and containment network, to ensure that the victim can exercise his or her rights in criminal proceedings.

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<sup>406</sup> [Ley de la Persona Adulta Mayor](#) No. 30.490 30490 of June 30, 2016.

<sup>407</sup> [Enabling Regulations of the Law on Older Persons](#), Law No.30490, August 25, 2018.

<sup>408</sup> Judicial Branch of Peru, Permanent Commission on Access to Justice for Persons in Condition of Vulnerability and Justice in your Community, [Judicial Alert System for Older Persons](#), Directive No.006-2016-CE-PJ, 2016.

<sup>409</sup> Ministry of Women and Vulnerable Populations (MIMP), [Protocolo de Atención del Centro Emergencia Mujer](#), Ministerial Resolution No.100-2021-MIMP, March 30, 2021.

<sup>410</sup> Constitutional Court, Constitutional Court Order, [Exp No.02214 2014-PA/TC Lambayeque Inocente Puluche Cardenas](#), May 7, 2015.

Although these innovations do not specifically target the elderly, the National Institute for the Elderly is working in continuous coordination with the Attorney General's Office to adopt a human rights perspective to protect them. Thus, both bodies are working together to develop a protocol to be followed in cases of violence against older persons.

#### 4.10 Right to care and rights of older persons receiving care

424. Below, the IACHR will discuss standards related to care of the elderly. Accordingly, the Commission will refer to both facets of care, as access to care services and the rights of the elderly once they have access to care. The IACHR will also refer to institutionalization of older persons and argue that this practice should be discouraged. Rather, community care models need to be pursued for the elderly until the day they die. Finally, the Commission will refer to the plans and programs reported by States regarding long-term care, and specifically the provision, regulation, and oversight of such services.

##### A. International standards regarding the right of access to care and the rights of older persons receiving care

425. The Commission considers that care for the elderly involves a broad spectrum of rights, actors involved (State, civil society, and families or reference groups); types of social and health services (rehabilitation, nutrition, chronic disease care, palliative care, community integration programs, among others), and types of care (in short or long-stay residential facilities, home care, day care centers, etc.). As is often pointed out, the elderly population itself constitutes a heterogeneous group with different socio-health profiles and, consequently, with specific protection and care requirements.

426. From a regulatory point of view, the Convention on Older Persons envisages care both as a principle and as an autonomous substantive right. As general principles, the CPM recognizes care and welfare,<sup>411</sup> and regards them as a responsibility of the State, the family, and the community.<sup>412</sup> Accordingly, the IACHR considers that the norms related to the care of persons must be interpreted and applied by the State and its agents in such a way as to favor the well-being of those persons and the members of their families and the community in general.

427. Likewise, various articles of the Convention on Older Persons establish the relationship between the situation of older persons and their right to care. Thus, the IACHR finds that the right to care has two facets. The first facet corresponds to the right to access care. The second facet concerns the rights of the elderly who are already receiving care.

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<sup>411</sup> CPM, Article 3. f).

<sup>412</sup> CPM, article 3. o).



428. Regarding the first facet, the CPM establishes the right of access without discrimination to comprehensive and palliative care, through comprehensive care systems that guarantee the protection and promotion of health, coverage of social services, food and nutritional security, water, clothing, and housing, while maintaining their independence and autonomy.<sup>413</sup> The IACHR notes that several of these prerogatives are not exclusive to the Convention on Older Persons, but rather are norms of international law upheld in other human rights treaties<sup>414</sup> and international instruments.<sup>415</sup> As an international obligation, in order to favor access to care, States must design support measures for families and caregivers, considering the gender perspective and respect for the dignity and physical and mental integrity of older persons. In this regard, the Commission finds that the right of access to care imposes an obligation on States to provide comprehensive and structured operations when it comes to the exercise of the aforementioned human rights by the elderly and to support families in the provision of this care when necessary.
429. Regarding the second facet, the IACHR finds that the CPM provides a series of guarantees for older persons who are already under any type of care. In this regard, the Commission notes that the enabling regulations to the CPM focus on freedom to choose when care starts and ends,<sup>416</sup> the right to be cared for by specialized personnel,<sup>417</sup> establishment of an adequate regulatory framework for the provision of care services,<sup>418</sup> establishment of liabilities for negligence against the elderly,<sup>419</sup> and provision of palliative care services.<sup>420</sup>
430. Specifically, the regulatory framework for the provision of long-term care for the elderly involves guaranteeing access to in-house information (medical records) and external information (media, social networks, and so on); preventing illegal interference in their private life (for example, their correspondence); promoting interaction with their family and society; protecting their safety, freedom and mobility; protecting their privacy and intimacy in terms of their personal hygiene.<sup>421</sup> The last-mentioned protection should be interpreted in line with Article 16 of the CPM which autonomously establishes older persons' right to privacy and intimacy and not to be subjected to arbitrary or unlawful interference in their private

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<sup>413</sup> CPM, Article 6, second paragraph; Article 12, first paragraph.

<sup>414</sup> ACHR, PSS, ICCPR, ICESCR.

<sup>415</sup> ADRDM, UDHR.

<sup>416</sup> CPM, Article 12. a.

<sup>417</sup> CPM, Article 12. b.

<sup>418</sup> CPM, Article 12. c.

<sup>419</sup> CPM, article 12. d.

<sup>420</sup> CPM, Article 12. e.

<sup>421</sup> CPM, Article 12. c. i. - v.

life, family, home or domestic unit, or any sphere, and specifically mentions elderly persons receiving long-term care services.

431. For its part, Article 22 on the right to recreation, leisure, and sports establishes the State's responsibility to promote recreational services and programs, including tourism, as well as leisure and sports activities that take into account the interests and needs of the elderly, particularly those receiving long-term care services, in order to improve their health and quality of life in all its dimensions and promote their self-realization, independence, autonomy and inclusion in the community.
432. Likewise, Article 24, referring to the right to housing, establishes the obligation to adopt pertinent measures to promote the full enjoyment of this right and to facilitate older persons' access to integrated social and health services and home care services that allow them to reside in their own home in accordance with their wishes, reinforcing their right to autonomy and to be able to access care in their own home and not necessarily in a short or long-term care facility.
433. The Commission emphasizes that the Convention on Older Persons establishes the protection of the rights of older persons to care in different environments and to different forms of care, and establishes responsibilities to guarantee those rights. The Commission will then refer specifically to the care of older persons residing in long-term care facilities, with particular attention to the conditions governing their admission and stay in those facilities and the need to avoid institutionalization and to safeguard, *inter alia*, their right to autonomy and to live with dignity in old age.
434. The Commission finds that, in relation to persons with disabilities, there is no clear consensus with regard to internment without consent under exceptional circumstances when it comes to persons with disabilities. In this regard, the Human Rights Committee has pointed out that the deprivation of liberty of a person with a disability may only be carried out for the purpose of preventing the person from harming himself or herself or causing injury to others,<sup>422</sup> while the Committee on Persons with Disabilities has pointed out that the internment of persons with disabilities should be generally prohibited.<sup>423</sup> However, the bodies responsible for the protection of the rights of persons with disabilities have been clear in indicating that there is a duty of States to eradicate institutionalization as this is a discriminatory practice, which entails the *de facto* denial of their legal capacity and deprivation of

<sup>422</sup> Human Rights Committee, General Comment No. 35 Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 19

<sup>423</sup> Persons with Disabilities Committee, Guidelines on deinstitutionalization, including in emergencies (2022), CRPD/C/5, October 10, 2022, para. 6-13 and following.

liberty based on perceived defects<sup>424</sup> in persons, and should therefore be considered prohibited in international law and abolished by States.<sup>425</sup>

435. It is important for the Commission that the Independent Expert on the enjoyment of all human rights by older persons has recognized that "Situations of deprivation of liberty include the coerced institutionalization of older persons in private and public institutions, such as residential care establishments, long-term care or nursing homes; in hospitals and psychiatric facilities; in restrictive community-based detention; or in forced home confinement, usually by relatives or caregivers."<sup>426</sup> Likewise, with regard to the manifestation of consent for their institutionalization, the Independent Expert has pointed out that "neither older age nor a diagnosis of mental disorder is sufficient to determine their lack of capacity to make meaningful decisions. In any case, if there is diminished capacity, it is the obligation of States to ensure that systems of supported decision-making are in place, as opposed to the systems and practices of substituted decision-making that are often employed."<sup>427</sup>
436. Likewise, as already mentioned in this report, there are prejudices and stereotypes associated with the lives of the elderly that result in their forced institutionalization. In this regard, the IACHR observes a negative view of old age and aging based on myths and stereotypes that regard older persons as mere objects of protection, incapable of making their own decisions, physically and mentally handicapped, socially isolated, economically dependent and a burden on the family and the community, in addition to stereotypes that frequently treat old persons like infants. The generalization of this negative view of old age and aging has led to legitimization of the institutionalization of the elderly simply because of their age and constitutes a systematic practice of discrimination, violating their rights to freedom, autonomy, and self-determination. In the same vein, the Commission finds that these stereotypes and prejudices permeate family and social relationships, and often result in the institutionalization of the elderly without their consent.
437. Based on the above, the Commission notes that Article 7 of the Convention on Older Persons, on the right to independence and autonomy, specifies the obligation of States to guarantee older persons the right to choose their place of residence, where and with whom

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<sup>424</sup> The Committee "Impairment in the present guidelines is understood as a physical, psychosocial, intellectual or sensory personal condition that may or may not come with functional limitations of the body, mind or senses." In: RPD Committee, Guidelines on the Right to Liberty and Security of Persons with Disabilities, 2014, A/72/55, para. 6.

<sup>425</sup> Persons with Disabilities Committee, Guidelines on deinstitutionalization, including in emergencies (2022), CRPD/C/5, 10 October, 2022, para. 6 and following.

<sup>426</sup> Human Rights Council, "Older persons deprived of their liberty. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler", 51st session 12 September-7 October 2022, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/51/27, 9 August 2022, para. 54.

<sup>427</sup> Human Rights Council, "Older persons deprived of their liberty. Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler", 51st session 12 September-7 October 2022, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/51/27, 9 August 2022, para. 55

to live, and not to be forced to live according to a specific way of life, which is the case when the elderly person is institutionalized and must adopt the lifestyle and abide by the system of norms and rules of the institution to which he/she is admitted.

438. Accordingly, the IACHR observes that the elderly and persons with disabilities encounter similar situations, and that there is even an intersectional overlapping of discrimination factors when it comes to institutionalization. Thus, the Commission considers that the institutionalization of the elderly is a practice that should be discontinued in the Americas and replaced by community care that allows older persons to live in their own community for the rest of their lives. However, the IACHR observes that, in certain situations, and pending progressive implementation of assistance services for the elderly, the existence of institutionalization practices could be maintained as long as older persons consent to it and provided that assistance and care practices in such institutions do not affect their physical or psychological integrity.
439. However, there are situations in which the internment of an elderly person is voluntary and he or she chooses to reside in nursing or palliative homes. In these cases, the IACHR notes that caregivers should follow the guidelines already mentioned in this report.

#### **B. National regulatory frameworks, national policies and programs regarding the right of access to care and the rights of the older person receiving care**

440. In this section, the IACHR will report on the main standards and programs related to the provision of care and long-term care for the elderly so that they can exercise their rights of access to care and rights to receive care. In this regard, according to the information provided to the Commission, there are numerous long-term care centers in the region. Thus, the Commission notes finds that information on centers for residents in long-term care facilities for the provision of social and health services and their regulation through protocols or guidelines was provided by Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Jamaica, Paraguay, Peru, Trinidad and Tobago, and Uruguay.
441. The IACHR notes that Ecuador reported that institutionalization of the elderly is the last resort for their care and attention, and in the case of Peru, the law itself establishes that consent must be given for internment. The Commission also highlights reports that, in some cases, ombudspersons' offices or other institutions conduct studies on the compatibility of care centers for the elderly with human rights standards, as is the case in Peru and Trinidad and Tobago. In addition, the IACHR appreciates reports showing that some states -such as Uruguay- are using censuses to keep track of people residing in long-term care facilities since it allows them to make evidence-based public policy decisions.

442. Below, the IACHR will describe the policies and programs for the care of older persons reported by the States. The information contained in this section is supplemented in the Annex to this report.
443. Argentina informed the IACHR that at the national level there is no specific law regarding institutionalization; however, at the provincial level laws differ, as do oversight and control bodies for long-term residences for the elderly. Thus, it indicated that the policy of institutionalization with respect of older persons adopted by the National Directorate of Policies for Older Adults (DiNaPAM) indicates that they should be institutionalized only as a last option and once alternatives contemplated in the progressive system of care have been exhausted. Likewise, the Regulations for Long-Term Residences for the Elderly approved by Resolution No. 612-2015 for eight residences under the responsibility of DiNaPAM promote a person-centered care model and establish the framework for the provision of services, conditions for admission, stay, and discharge, as well as professional profiles and job descriptions. In particular, Resolution No. 612-2015 of the Secretariat states that: "The right to autonomy, i.e. the possibility of taking decisions and acting independently, shall be guaranteed. Accordingly, all actions carried out for the benefit of the elderly will be aimed at strengthening their independence, their decision-making capacity, and their personal and community development.
444. The Departmental Autonomous Governments in Bolivia, through the Departmental Social Management Services - SEDEGES or Departmental Social Policy Secretariats - SEDEPOS, are responsible for overseeing the way public, private or mixed long-term centers are run. According to the information provided, shelters are regulated by instruments intended to form part of the comprehensive care system for older adults interned in a home, residence, or shelter for older adults. They include: a) Model Regulations for the Accreditation, Opening, Operation, and Sanctioning of Shelters for Older Adults, where by some departments already have a Departmental Law that regulates the way shelters are run and applicable sanctions: La Paz (Law No.056), Potosí (Law No.10/16), Cochabamba (Law No.294), and Chuquisaca (Law No.120/2013). b) Protocol for the Care and Protection of Older Adults.<sup>428</sup>
445. In Chile, the institutionalization of older persons must have the consent of the persons concerned. Otherwise it would be illegal to deprive them of their liberty, violating their right to autonomy in making their own decisions.<sup>429</sup> In the event that an older person has mental difficulties in making decisions, his or her relatives must follow a judicial procedure called interdiction for insanity, which consists of declaring the legal incapacity of the older person to perform acts or sign contracts and to represent himself or herself extrajudicially and judicially. The procedure of interdiction due to insanity must be performed out through the Judi-

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<sup>428</sup> Ministry of Justice and Institutional Transparency, Vice Ministry of Equal Opportunities, General Directorate of Children and Older Adults; [Protocolo de Atención y Protección a las Personas Adultas Mayores](#), May 2019.

<sup>429</sup> Chile, Response to the Questionnaire, February 10, 2019.

cial Assistance Corporation or with a private attorney before the Civil Court in the place where the person to be declared incapacitated is domiciled.

446. The Chilean State also indicated that the policies and actions carried out by the National Service for Older Adults (SENAMA) have been aimed at establishing a paradigm shift in terms of approaches, moving from a service-based model of care to a rights-based approach focusing on the elderly. That is now reflected in the programs that SENAMA offers, from their design to their implementation.
447. Within the framework of the various actions for the coordination and articulation of social and health services targeting people who are dependent and specifically within the social and health devices that exist for older persons requiring specialized care, there are, for instance, Long-Term Residences for the Elderly (ELEAM), which, according to the regulations governing their installation and the way they are run (DS No.14 of MINSAL/2010430), are "establishments where people of 60 years of age or older reside, who, for biological, psychological, or social reasons, require a protected environment and differentiated care. Such care is aimed at disease prevention, maintenance of their health, preservation and stimulation of their bodily and mental functions, and the reinforcement of other capabilities. In order to operate, long-term residences for the elderly must be authorized by the competent Regional Secretariat of the Ministry of Health of the place where they are located" (Art. 2, DS N°14, MINSAL).
448. Accordingly, Chile reported the existence of Care Protocols for Residents,<sup>431</sup> which establish quality standards for care in SENAMA's ELEAMs, safeguarding equity in care services for older adults, from a rights-based approach.
449. Costa Rica reported that it does not have an institutionalization policy; however, Article 5 of Law 7935 and Article 12 of the Convention on Older Persons, to which Costa Rica is a party, protect autonomous decision-making by older persons. Executive Decree No. 37165-S regulates the qualification and operating conditions of all long-term residences for the elderly, providing personal hygiene services, support for day-to-day activities, food, rehabilitation, recreation, nutrition, and mental stimulation in a welcoming and affectionate environment, whether public or private, for profit or not-for-profit.<sup>432</sup>
450. In Ecuador, there are no particular conditions governing institutionalization of the elderly in the private sector. However, they are subject to regulation by the State. In 2014, the Ministry

<sup>430</sup> [Decree No.14. Approves Regulation of Long-Term Residences for the Elderly](#), Ministry of Health, February 24, 2010. Currently being amended.

<sup>431</sup> [Resident Care Protocols](#), SENAMA, 2016.

<sup>432</sup> [Reglamento para el otorgamiento del permiso sanitario de funcionamiento de los hogares de larga estancia para personas adultas mayores \(Regulations for the granting of the sanitary permit for the operation of long-term residences for the elderly\)](#), Executive Decree No. 37165-S, June 26, 2012.

of Economic and Social Inclusion (MIES), responsible for authorizing and setting operational standards for centers and services for the elderly in both the public and private sectors, issued the "Norma Técnica Población Adulta Mayor Centros y Servicios Gerontológicos (Technical Standard for Persons in Older Adults Centers and for Gerontological Services).. Modalidad Residencia, Diurno, Espacios Alternativos y Atención domiciliaria (Residential, Day Care, Alternative Spaces, and Home Care)".<sup>433</sup> This standard defines types of gerontological care and service provider categories: a) direct care: centers and services provided directly by the MIES, b) under agreement: provided by Decentralized Autonomous Governments, Civil Society Organizations, Religious Organizations with which the MIES signs cooperation agreements, c) private: individuals, Civil Society Organizations, Religious Organizations, other private sector entities, d) public: provided by other public sector entities: Decentralized Autonomous Governments, public sector entities that have their own financing and are not financially dependent on the MIES.

451. It is worth noting that Ecuador reported that in direct-care gerontological centers and those based on agreements signed with the MIES, institutionalizing the elderly is regarded as a last resort measure for providing them with the care they need. The focus is on admitting older persons of 65 years or more who require special protection on a temporary or definitive basis, who cannot be looked after by their relatives; who lack a place to live permanently, who are in a situation of abandonment and lack family support, who live in poverty or extreme poverty, or who live in conditions of high risk, and who express their willingness to enter a center.
452. The Public Policy for Older Adults<sup>434</sup> of El Salvador<sup>435</sup>, establishes in its guiding principles that "any program, plan, or action derived from this policy must primarily seek to encourage older adults to continue to make decisions about their lives, as this is a basic part of the recognition of older adults. Self-determination must be guaranteed for older persons in the family, institutional, community, and social spheres." The "Manual for the Opening, Operation, and Supervision of Substitute Homes or Residences" establishes the minimum parameters governing the way these homes are run. In addition, the Special Law for the Protection of the Rights of the Elderly<sup>436</sup> establishes that the functions of the National Integral Council for the Elderly (CONAIPAM) include the registration, authorization, and supervision of care centers (residences or homes, day centers, dining rooms, dormitories, and various types of homes for the elderly), whether public or private (Art.52). Specific programs developed in the homes emphasize the "eradication of restraints", meaning any material device

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<sup>433</sup> [Technical Standard for the Elderly Population, Gerontological Centers and Services. Modalidad Residencia, Diurno, Espacios Alternativos y Atención domiciliaria](#), Ministry of Economical and Social Inclusion (MIES), Quito.

<sup>434</sup> Government of El Salvador, Consejo Nacional de Atención Integral a los Programas de los Adultos Mayores (CONAIPAM), [Política Pública de la Persona Adulta Mayor](#), October 2017.

<sup>435</sup> Asociación de Gerontología de El Salvador (AGESALVA), Response to the Questionnaire, January 29, 2019.

<sup>436</sup> Decree No. 817 of the Legislative Assembly of January 27, 2021, [Ley Especial para la protección de los derechos de la persona adulta mayor](#)

attached to a person and which cannot be removed by him/her, to prevent his/her freedom of movement; as well as the administering drugs to a person without a psychiatric diagnosis, in order to reduce his/her movements. Both violate his/her right to autonomy.

453. The Guatemalan Human Rights Ombudsman informed the IACHR that there is no specific policy on institutionalization.<sup>437</sup> Regarding regulations governing public, private, for-profit and non-profit establishments that care for the elderly, the Ministry of Public Health and Social Assistance (MSPAS) "Technical Standard No. 03-2018 Care Centers for Older Adults<sup>438</sup>" governing the authorization, regulation, and control of care facilities for the elderly, which is mandatory for both public and private establishments throughout the national territory. The institutions involved in the oversight of these services are the Department of Regulation, Accreditation, and Control of Health Facilities (DRACES) of the MSPAS, the National Committee for the Protection of the Elderly (CONAPROV), and the departmental governments. The specific objectives of the Ombudsperson's Office for the Elderly of the Human Rights Procurator's Office include the supervision of public and private entities that provide these services.
454. In Jamaica, residential care facilities for the elderly are either private or state (municipal), where the choice of a private home can be made by the older person concerned or his or her relatives. The Standards, Monitoring, and Regulation Division of the Ministry of Health certifies, regulates, and monitors privately-run homes while homes managed by municipalities, called hospices, are supervised and regulated by the Supervisory Board of the Ministry of Local Government and Community Development. According to the report, the aforementioned Division is responsible for certifying and monitoring the operating standards of privately run homes and the quality of care provided to elderly residents.
455. Law No.5537439 of Paraguay, enforced by the Ministry of Public Health and Social Welfare, regulates the operation, monitoring, and supervision of care facilities for the elderly, whether public or private (profit or non-profit), categorizing them into three types of facilities according to the degree of dependence of the elderly.
456. Article 5 of Peru's Law for Older Adults<sup>440</sup> establishes their right to grant prior and informed consent in all aspects of their lives. Article 13 defines Care Centers for the Elderly as "public or private spaces authorized by the State where comprehensive and integrated or basic specialized care services are provided for the elderly, according to their care needs." It also classifies the centers according to the type of care they provide. In particular, it defines res-

<sup>437</sup> Human Rights Ombudsman of Guatemala, Response to the Questionnaire, January 2, 2019.

<sup>438</sup> [Technical Standard No. 03-2018, Elderly Care Centers](#), Ministry of Public Health and Social Assistance, 2003.

<sup>439</sup> [Law No.5537, "Which regulates care establishments for the Elderly"](#), February 4, 2016.

<sup>440</sup> [Ley No. 30490, Ley de la Persona Adulta Mayor](#), July 20, 2016, Articles 5 and 13.



idential care centers as those that offer comprehensive gerontological, geriatric, or mixed care services to self-sufficient or dependent older adults. The Ministry of Women and Vulnerable Populations, either directly or in coordination with public institutions, is responsible for the accreditation, supervision, and oversight of residential care centers. Supreme Decree No.004-2016-MIMP adopts the Regulations governing Care Centers for Older Adults, which determines the way residential care centers are run and, in Articles 21 and 22, establishes the prior and informed consent of the older person as a prerequisite for admission as follows: "For the admission of an older person to a Care Center, he or she must give his or her written consent. In the event that the older person is not fully capable of exercising his or her civil rights, authorization must be granted by the legally appointed guardian."<sup>441</sup>

457. The Ombudsperson's Office of Peru informed the IACHR about Report (*Informe de Adjuntía*) No. 11-2018-DP/AE "Contributions to the regulation of residential care centers for the older persons,"<sup>442</sup> which presents the findings from the monitoring of two public residential care centers run by the Lima Charitable Society and two residential care centers of the National Integral Program for Family Welfare - INABIF, in which long-term care for dependent persons is provided. The visits to the residential care centers served to identify multiple findings, particularly the following: inaccessible infrastructure and overcrowding, insufficient personnel, failure to prioritize mental health care, lack of comprehensive protocols referring to the comprehensive care of the person and the way these centers are run, and in some cases impairment of the right to autonomy, as informed consent was not obtained for admission or length of stay. In response to the problems identified, it was recommended that the Ministry of Women and Vulnerable Populations: a) strengthen public policy on care for older persons, incorporating professional training for caregivers; b) include quality standards in the regulations on residential centers; c) issue guidelines for the development of protocols governing the way residential and care centers are run.
458. Licensing of public and private care homes in Trinidad and Tobago is done in accordance with the Private Hospitals Act, Chapter 29:3443 and the Trinidad and Tobago Health Services Accreditation Standards Manual for the Health Sector 2002. These mechanisms are implemented by the Ministry of Health through multidisciplinary teams composed of qualified officials (Medical Officers, District Health Visitors, Public Health Inspectors, Health and Safety Officers and Quality Coordinators). Reportedly, inspectors from the Ministry of Social Development and Family Services may accompany these teams under cooperative arrangements envisaged in the regulations.

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<sup>441</sup>[Supreme Decree No.004-2016-MIMP, Regulation of Care Centers for Older Adults](#), May 27, 2016, Articles 21 and 22.

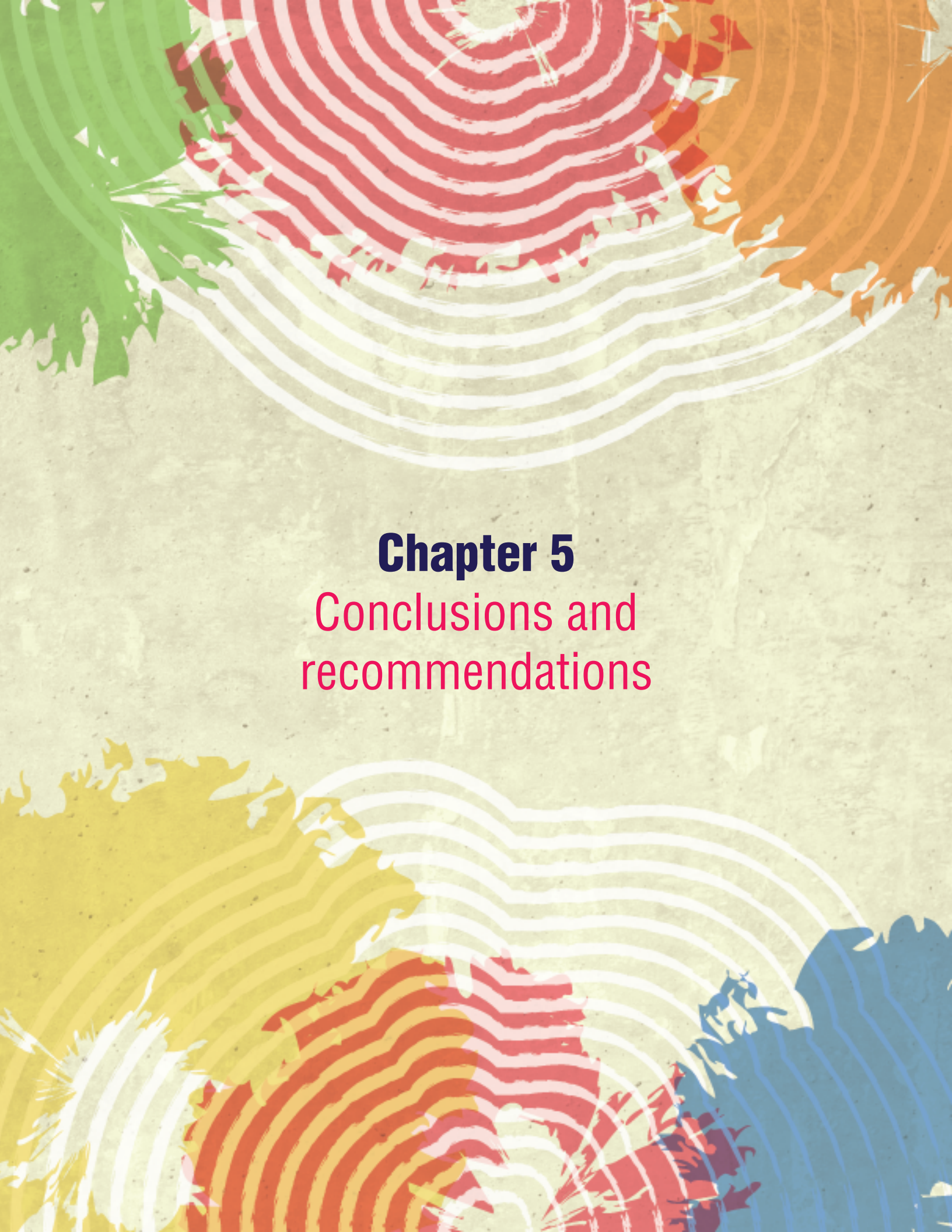
<sup>442</sup> [Adjuntía Report No.11-2018-DP/AE "Aportes para la regulación de los centros de atención residencial para personas adultas mayores"](#), Ombudsperson's Office (Procuraduría del Pueblo) Peru, October 12, 2018. See also [Special Reports Series No.003-2021-DP "El derecho a la salud de las personas adultas mayores en los centros de atención residencial: propuestas para una atención integral y prioritaria frente al COVID-19"](#), Procuraduría del Pueblo, Peru, March 2021.

<sup>443</sup> [Private Hospitals Act](#), Chapter 29:3, updated as of December 31, 2016.

459. The Home Inspection Unit of the Ministry of Social Development and Family Services makes periodic and unannounced visits to homes in order to inspect and monitor these facilities, both private and public. The Inspection Unit was established by the Homes for Older Persons Act No. 20 of 2007<sup>444</sup> on licensing, regulation, and control of homes for older persons, and is governed by the Homes for Older Persons Regulations of 2009. The findings from these inspections are shared with the Ministry of Health to assist with the audit of nursing homes.
460. In Uruguay, long-term residences for the elderly are governed by Law No. 17.066, which establishes the minimum conditions required for licensing purposes, the powers vested in inspectors, and the penalties that may be imposed on such residences. This law gives the Ministry of Public Health the authority to regulate, supervise, and authorize establishments. This law is supplemented by Article 518 of Law No. 19.355, which assigns to the Ministry of Social Development (MIDES) the authority to regulate and control social aspects of establishments that provide care for the elderly.
461. As reported by Uruguay, according to the 2011 Census, 13,817 people were living in long-term residences was, 11,560 of whom were over 65 years of age, representing 2.5% of the elderly population. These residences are divided into two types: for-profit (residential) and not-for-profit (homes), the latter pertaining to civil associations or foundations. According to information from the National Institute for the Elderly (Inmayores) of the Ministry of Social Development, which conducted two censuses of these establishments (in 2014 and 2015) and maintains an updated database, there are 1,124 long-term residences, the vast majority of which are for-profit (82%). There are approximately 90 homes and they usually receive contributions or exemptions from the Banco de Previsión Social (BPS) or departmental governments. Seven State Health Services Administration (ASSE) homes operate in the interior of the country, two of which are managed directly by ASSE and five operate under agreements with civil society organizations. The 80 homes that have an agreement with the BPS are mostly (76%) to be found in the interior of the country. They are home to approximately three thousand residents who are retirees or pensioners of the BPS and who cover a percentage of their liabilities (*aportan un porcentaje de su pasividad*).

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444 [Homes for Older Persons Act](#)No. 20, 2007.



**Chapter 5**  
Conclusions and  
recommendations

## CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conclusions

462. Based on the foregoing considerations, the Inter-American Commission arrives at the following conclusions:

1. The Convention on Older Persons constitutes the most comprehensive standard of international law for the protection of the human rights of older persons and its universal ratification in the Americas is essential. The Convention contains the latest norms and embodies a shift in the paradigm governing protection of older persons, reflecting the principal findings of international human rights bodies and instruments of international law on the subject, which in turn reflect the will of the States and their commitment in this area. Accordingly, for States that have not yet ratified the Convention, the application of the Convention's standards must be considered when applying or interpreting any human rights norm in relation to situations involving older persons.
2. In addition, in several States of the Americas, the adoption of specific laws for the protection of older persons reflects the incorporation of the new paradigm regarding old age and active aging. The development and implementation of policies and programs that gradually incorporate a comprehensive human rights approach, in which older persons are conceived of as subjects of rights, is another manifestation of the progressive change in the old age paradigm, which needs to be more extensively adopted and embraced throughout the region. The establishment of institutions for the protection of older persons is an emerging phenomenon in the region that should evolve towards more complex structures of inter-agency (governmental and non-governmental) coordination, with a focus on comprehensive protection of the human rights of the elderly. However, the new focus on the comprehensive protection of older persons and the increasing size of this age group for demographic reasons place more and more demands on the social security and health systems, posing challenges for the States and civil society organizations seeking to coordinate institutional protection systems for the elderly and to finance enough policies and programs to guarantee the effective enjoyment of their rights.
3. Ageism is a culturally rooted and frequently ignored problem that affects all the States of the Americas. Negative stereotypes and prejudices, as well as discriminatory actions or practices against older persons, contribute to violence and mistreatment, as well as multiple violations of their human rights. Although progress has been made through the implementation of various strategies by States and civil society to combat ageism, cultural change requires that States maintain and sustain their efforts in

this regard. It is important to address ageism in a cross-cutting manner and with an intergenerational approach sensitive to the changes in people's lives.

4. There is a broad spectrum of systems for protecting the rights of the elderly in the region. This is reflected in varying degrees of progress made with regulations governing the recognition and protection of rights, the formulation and implementation of policies, and the development of institutions related to the elderly. Some States have general national policies for the protection of older persons include special programs in such areas as health, social security, ESCER, pensions, and access to justice. These regulations make it possible to provide plans and programs tailored to the realization of the human rights of the elderly. At the operational level, however, supervision mechanisms should establish monitoring systems and indicators of the effectiveness of interventions in terms of the well-being of older persons.
5. All the States that provided information for this report offer some degree of protection of older persons against discrimination, identify them as a vulnerable group, and provide special measures for their protection. However, the lack- or incipient - development of norms, policies, and programs protecting the rights of older persons facing intersectional discrimination still poses a challenge in the Americas. Thus, there is no denying the obvious vulnerability of elderly women exposed to poverty, violence, and marginalization; the lack of attention drawn to LGBTI older persons and the lack of explicit recognition of their sexual orientation or gender identity; the existence of people deprived of liberty exposed to violence; and migrant elderly people who face deterioration of their health; among other vulnerable groups.
6. The creation and development of comprehensive care systems, with a focus on community integration and incorporating the consent of the elderly as a fundamental premise is a regional challenge that needs to be addressed in the short and medium term. The design of care systems that allow exercise of the rights to autonomy, independence, participation, and community integration should include the participation of the elderly. The State should play a leading role in their implementation and monitoring, as well as their total or partial financing. Pending modification of the negative patterns of institutionalization, it is necessary for States to monitor the operations of private, public-private, and public facilities for caring for older persons on an ongoing basis.
7. The right to social security and the right to health of older persons has been widely recognized in the national regulations of the States of the region. The approach to pension systems has improved, from restricted access and coverage through mandatory contributions in the formal labor market with significant gender gaps as a result of the disparity of gender roles that disproportionately affects women, to pension systems with broader coverage that include access to non-contributory pensions or re-

laxation of existing conditions, in addition to measures that close existing gender gaps in access to benefits in some cases.

8. Regarding free and informed consent in the field of health, the States have several relatively recently developed regulations for the protection of this right; however, the development of regulations, protocols, and specific directives is required for their effective implementation through due guarantees and support systems that allow older persons to make decisions on an equal footing with others. This is an aspect that needs to be studied in greater depth.
9. There are valuable recent efforts in several States to ensure access to justice for older persons through protocols, guidelines, and other provisions. Positive experiences include aspects such as training of judicial personnel, preferential attention, reasonable accommodations, and expeditious processing of cases involving older adults. However, more needs to be done to develop strategies to simplify procedures and reduce the time required for sentencing.
10. Progress has been made in national regulations for the protection of the right of older persons to a life free from violence. These regulations have evolved from laws on domestic violence with particular emphasis on gender-based violence. Those protections are today reflected in national laws on older persons, There is also a tendency to broaden the scope of application of protection for older persons from violence and abuse, from the private and family sphere within households to broader public or collective spheres, which include long-term residential establishments, social and health service centers, government offices, public spaces for leisure and recreation, among others.
11. The policies and programs aimed at safeguarding the integrity of older persons encompass a broad spectrum of specific objectives, forms of work, types of service, and responsible actors. The existence of public campaigns for dissemination, awareness, and prevention of abuse and mistreatment of older persons, which also include programs to train public officials in proper treatment of the elderly during the provision of public services, is an emerging positive practice in the region. Other positive public policies that need to be extended in the Americas include the development of mechanisms for response and assistance to victims of violence through specialized units in cases where the victims are older persons, involving actions of various types such as investigation of the facts, legal support, and psychological support.
12. A major challenge in the region concerns the collection of data and analysis of information on older persons, due to the absence or scarcity of disaggregated information on multiple aspects that affect the rights of older persons, such as, inter alia, violence and abuse, access to justice, and participation. Also of concern is the lack of informa-

tion regarding older persons pertaining to groups that are historically discriminated against, such as LGBTI people, Afro-descendants, people deprived of liberty, women, migrants, people with disabilities, and others.

13. Access to the fundamental rights of migrants, refugees, stateless persons and victims of human trafficking must be guaranteed regardless of their migratory status, as well as the non-application of refoulement or expulsion measures. States must offer guarantees for the protection of the human rights of older persons in a situation of mobility and the application of positive measures with a differentiated approach considering their particular situations of vulnerability and needs for specific care and protection.
14. The challenges to be faced for the recognition of the rights of older persons are so great that they can only be overcome with the joint effort of States, civil society, academia, communities, individuals, and international and regional organizations. The Inter-American Commission reiterates its commitment to the promotion and protection of the human rights of older persons in the region.

## 5.2. Recommendations

463. Based on the conclusions reached, and by virtue of Article 41(b) of the American Convention, the Inter-American Commission makes the following recommendations:

- **General recommendations on the situation of the rights of older persons**

15. Ratify or accede to the Convention on Older Persons. While the accession or ratification processes takes place, the Commission recommends that it be used as a benchmark in the elaboration of public policies with a human rights approach for older persons.
16. Adopt measures to foster a cultural change to eliminate ageism, including promoting media campaigns to raise awareness of the new paradigm of active old age with rights, fostering good treatment and eradicating stereotypes and negative myths about old age based on disability. In this regard, States should promote a cross-cutting approach to ageism by demonstrating that aging is part of life.
17. Encouraging intergenerational activities that bring older people closer to younger generations also helps combat ageism, avoid isolation, and make older persons' right to participation effective.

- **Specific recommendations regarding the right to equality, the prohibition of age-based bias (ageism), and intersectional discrimination**

18. Decide what laws are needed to promote existing laws or regulations, policies, and programs that protect the rights of older persons and that protect them from suffering multiple or aggravated forms of discrimination for various reasons other than age. They should include, inter alia, aspects such as restoration of rights; drawing attention to victims by providing disaggregated information; care services that address the specific characteristics of older persons belonging to historically discriminated groups; and public awareness campaigns.
19. Developing and strengthening rules, regulations, policies, and programs that protect the rights of people and protect them from suffering multiple or aggravated forms of discrimination for various reasons other than age is one of the great challenges to be faced. Actions required include public awareness campaigns that contribute to generating a cultural change in the attitude of society as a whole towards this segment of the population.
20. Carry out a diagnosis and implement policies for the gathering and analysis of statistical, disaggregated, and systematic data regarding compliance with the standards established by the IACHR Court in its Advisory Opinion OC-29/22 of May 30, 2022 regarding the differentiated approaches applicable to older persons deprived of liberty. Based on this evidence, establish applicable measures and the authorities responsible for implementing them, as well as any necessary changes to existing policies.
21. Conduct a diagnostic assessment and implement policies for the collection and analysis of disaggregated and systematic statistical data, with an intersectional approach, on violence and discrimination affecting LGBTIQ older persons. Based on this evidence, establish applicable measures and the authorities responsible for implementing them, as well as any necessary changes to existing policies.
22. Adopt protocols and guidelines for action aimed at migration authorities and detention center personnel for the protection of the human rights of older persons in a situation of mobility and the application of positive measures with a differentiated approach considering their particular situations of vulnerability and needs for specific attention and protection.
23. Design and implement urgent and priority programs for the protection of elderly women living in poverty and extreme poverty. Those interventions should be designed in such a way as to foster the autonomy of older women and be implemented with their consent, in a sustainable manner that allows them to live in dignity for their rest of their lives.



- **Specific recommendations regarding the right to independence and autonomy of older persons**

24. Prepare diagnostic assessments and establish working groups with the participation of older persons to determine the level of incorporation of the right to independence and autonomy of the elderly. Priority areas of consultation should be health and care services, without neglecting any other aspect related to the participation of older persons in social life.
25. Prepare diagnostic assessments and establish working groups with the participation of senior citizens to identify the needs for the development of support systems for the exercise of their right to autonomy in terms of mobility, decision making related to their legal personality and property, including their pensions, access to health-related treatment, the exercise of their right to vote, accessibility in public spaces, and access to urban and rural public transportation.

- **Specific recommendations regarding the right to health and informed consent of older persons**

26. Perform diagnostic assessments and draw up baseline documents to identify, for universalization of health coverage purposes, the quality and diversity of specific health services for older persons, the integration of the health system with other social protection systems for the elderly, financing, and the increasing pressure on health systems due to population aging and the consequent increase in demand for services.
27. Prepare diagnostic assessments and baseline documents to identify the needs to be guaranteed to ensure universal access to comprehensive health care services, including sexual and reproductive health. These include health promotion with a focus on prevention, disease management, rehabilitation, and palliative care, prioritizing primary care centers, where most first contact with the health system is made.
28. Establish protocols that guarantee and establish informed consent as a top priority during health care and the administration of medical treatments. Likewise, establish the guidelines to be followed in situations of medical emergencies involving older persons in which it is not possible to obtain consent.
29. Determine the existence of prioritized care methodologies or preferential access to health systems for older persons, and the need to strengthen existing health programs established exclusively for the care of older persons.

30. Develop differentiated services for dependent elderly people, such as palliative care, as well as regulations that guarantee comprehensive and effective care, particularly in health centers and in short or long-term residence facilities for older persons. Determine the human and financial resource needs for the renewal of programs to address the quality of life of older persons faced with cognitive impairment and needing palliative care in accordance with international standards on the human rights of the elderly.

- **Specific recommendations regarding community participation and integration with respect to rights to community participation and integration, accessibility, and personal mobility**

31. Strengthen policies and programs that include intergenerational activities as a way to help eliminate ageism.

32. Develop diagnostic assessments or baseline documents to identify urgent needs for infrastructure modifications for accessibility and mobility for older persons, in order to facilitate community participation and integration.

33. Conduct training programs for the older persons in the use of information and communication technologies, thereby helping reduce the disproportionate impact that inequalities in access to digital technologies have on the elderly.

34. Support or continue to strengthen groups or clubs for older persons.

- **Recommendations specifically regarding freedom of expression and opinion, and older persons' access to information**

35. Prepare diagnostic assessments or baseline documents that make it possible to identify priorities and obstacles to access regarding older persons' exercise of the right to freedom of expression and access to information.

36. Develop police action protocols to guarantee the rights of older persons in the context of demonstrations to avoid discriminatory effects and any extra harm to them caused by disproportionate and illegitimate use of force.

37. Promote educational activities aimed at older persons with respect to the use of information and communication technologies, thereby contributing to their integration into the community and society by reducing the digital divide that disproportionately affects them.

- **Specific recommendations with respect to the rights to food, water, sanitation, and housing**

38. Recognize access to water as a human right. Regulations should make it possible to prioritize access to water and sanitation for older persons.
39. Identify groups of older persons at nutritional risk and provide culturally appropriate nutrition improvement programs for the elderly, that safeguard their dignity.
40. Develop diagnostic assessments or baseline documents to identify housing needs for the elderly. The information must make it possible to discern the priorities and urgencies situations of older persons living in poverty, as well as study the housing subsidies needed for older persons who cannot afford housing.
41. Promote access to home loans or other forms of financing without discrimination, both in the public and private spheres, progressively eliminating the common practice of systematically denying access to credit on grounds of age.
42. Establish quick and simple judicial remedies to protect older persons from forced evictions.

- **Specific recommendations regarding the right to social security of older persons**

43. Determine -with a gender perspective- the quality social security benefits needed to cover basic levels of subsistence for older persons.
44. Ensure a level of income that allows for a dignified old age. In the face of any impairment of the non-contributory pension system, States must guarantee that older persons without access to other income must be prioritized, when it comes to any kind of restriction or reduction of economic allocations.
45. Review social security regulations, policies, and programs, ensuring universal access to benefits, particularly by expanding the coverage of non-contributory pension programs.

- **Specific recommendations regarding the rights of older persons to safety, to a life free from violence and from torture and cruel, inhuman, and degrading treatment or punishment**

46. Adopt specific norms to protect the integrity of older persons and their right to a life free from violence in contexts that are not protected by national norms on domestic

violence. Accordingly, adopt policies and broaden the scope of their application for the protection of older persons from violence and abuse.

47. Develop policies and programs that lead to the implementation or strengthening of reporting and support mechanisms in situations of violence and abuse in a manner that older persons can access.
48. Conduct studies that comprehensively analyze violence and mistreatment of older persons. Draw attention in these studies to the cases of elderly victims of violence and mistreatment belonging to groups that are historically discriminated against (LGBTI, Afro-descendants, women, indigenous people, people with disabilities, among others).
49. Design strategies to eliminate the reasons why violence and abuse are frequently not reported by the elderly, making the violation of their rights difficult to discern and preventing the restoration of their rights. These reasons include, inter alia, fear of reprisals, lack of knowledge of their rights, asymmetrical relationships of economic dependence, lack of protection measures against the aggressor, and lack of access and support facilities at the time of reporting.

- **Specific recommendations regarding the right of access to justice**

50. Adopt specific norms and procedures -with a gender focus- for older persons in procedural law, which will lead to simplification of procedures and reduction of the time taking for judgment to be handed down.
51. Consider the digital divide in the implementation of measures for access to justice, including the coordination of justice systems with other entities in order to provide information on the existence of digital tools for access to justice, as well as training in their use for the elderly.
52. Adopt measures for the establishment of specific norms and procedures for older persons in justice systems that lead to the simplification of procedures, as well as capacity building for justice operators on the rights of the elderly.

- **Specific recommendations regarding the right of access to care and the rights of older persons receiving care**

53. Implement or reform supervision and monitoring systems for the operation and quality of services provided by public, private or mixed short and long-term care facilities.

54. Ensure consensual access of older persons to long-term care facilities/homes and their social and health services, as well as compliance with operational and quality standards of the services provided in such homes.
55. Identify the negative effects of institutionalization on older persons and determine what is needed to replace it with community-based care systems that favor the autonomy and independence of older persons, and their integration into the community.
56. Develop comprehensive care systems, with a gender perspective, actively encouraging participation in their design, implementation, monitoring, as well as providing total or partial financing for them.